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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 666

CHIPPEWA INDIANS OF MINNESOTA, APPELLANT,

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED FEBRUARY 11, 1939.

SUPREME COURT OF THE UNITED STATES

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 10, 1939.

[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. H-155

CHIPPEWA INDIANS OF MINNESOTA

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On April 13, 1927, the plaintiffs filed their original petition.

On May 23, 1927, the defendant filed a general traverse to said petition.

On August 18, 1930, by leave of court, the plaintiffs filed an amended petition.

On September 27, 1930, the defendant filed a general traverse to the amended petition.

On August 22, 1935, by leave of court, the plaintiff filed a Second Amended Petition, which is as follows:

II. SECOND AMENDED PETITION—Filed August 22, 1935

Plaintiffs, the Chippewa Indians of Minnesota, respectfully show unto the court:

1. That plaintiffs constitute a designated class of persons [fol. 2] described as "all the Chippewa Indians in the State of Minnesota" in an agreement or agreements duly entered into with the United States pursuant to the Act of January 14, 1889 (25 Stat. at L., p. 642), and hereinafter more particularly described, by the terms of which plaintiffs as such class became and are entitled to the sole and exclusive beneficial interest in and to the trust thereby created and to the proceeds received from the lands and timber set apart in said agreements to be sold and disposed of as therein specifically directed, which proceeds constitute the corpus of said trust, and to have and to receive said corpus in equal shares upon the termination thereof. Plaintiffs bring this

suit under and by virtue of the authority contained in an Act of Congress approved May 14, 1926 (44 Stat. at L., 555), providing as follows:

"An Act Authorizing the Chippewa Indians of Minnesota to Submit Claims to the Court of Claims

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party as in other cases, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of the Act of January 14, 1889 (Twenty-fifth Statutes at Large, page 642), or arising under or growing out of any [fol. 3] subsequent Act of Congress in relation to Indian affairs which said Chippewa Indians of Minnesota may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

Sec. 2. Any and all claims against the United States within the purview of this Act shall be forever barred unless suit or suits be instituted or petition filed as herein provided in the Court of Claims within five years from the date of the approval of this Act, and such suit or suits shall make the Chippewa Indians of Minnesota party plaintiff and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the said Chippewa Indians approved in accordance with existing law; and said contract shall be executed in their behalf by a committee or committees to be selected by said Chippewa Indians as hereinafter provided. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Chippewa Indians to such treaties, papers, correspondence, or records as they may require in the prosecution of any suit or suits instituted under this Act.

Sec. 3. In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United

States may have against the said Chippewa Indians, and any payment or payments which may have been made by the United States upon any claim against the United States by [fol. 4] said Indians shall not operate as an estoppel, but may be pleaded as an offset in such suit or suits as may gratuities, of any, paid to or expended for said Indians subsequent to January 14, 1889.

Sec. 4. If it be determined by the court that the United States, in violation of the terms and provisions of any law, treaty, or agreement as provided in section 1 hereof, has unlawfully appropriated or disposed of any money or other property belonging to the Indians, damages therefor shall be confined to the value of the money or other property at the time of such appropriation or disposal, together with interest thereon at 5 per centum per annum from the date thereof; and with reference to all claims which may be the subject matter of the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Chippewa Indians in and to such money or other property.

Sec. 5. If in any suit by all the Chippewas of Minnesota against the United States it appears to the court that any band or bands of said Indians are, or claim to be, the exclusive legal or equitable owners, or are entitled to, or claim, a legal or equitable interest greater than an equal distributive share with all the Chippewa Indians of Minnesota, in the proceeds of any judgment or decree that may be entered or passed in settlement of any claims submitted hereunder, the court may permit, or of its own motion compel said band or bands to be made parties to any such suit, so that their rights may be fully and finally determined: Pro- [fol. 5] vided, however, That nothing herein contained shall be construed as conferring jurisdiction on the court to entertain and hear complaints or claims of a purely individual nature. In the event that any band or bands of said Indians are made parties to any suit herein authorized, the Secretary of the Interior shall ascertain, in such manner as he may deem best, the attorney desired by a majority of said Indians and shall permit the employment of an attorney under contract to represent them as provided by existing law, the compensation to be paid said attorney to be fixed by the Secretary of the Interior, and paid out of any money

in the Treasury to the credit of said band or bands of said Indians.

Sec. 6. Authority is hereby given for the employment of not to exceed two attorneys or firms of attorneys to represent the Chippewa Indians of Minnesota in the prosecution of any such suit. Under the direction of the Secretary of the Interior the Indians belonging on the White Earth Reservation are authorized to select a committee consisting of five of their members, and all the other Chippewa Indians in Minnesota are authorized to select a like committee from their members. Each committee so selected, or a majority thereof, is authorized to designate an attorney or firm of attorneys and to execute a contract with such attorney or firm in accordance with section 2 hereof.

Sec. 7. The two attorneys or firms of attorneys authorized to be employed under section 6 shall each receive, during their employment, compensation at the rate of $6,000 per annum, for a period of not exceeding five years, payable [fol. 6] in monthly installments as the same become due, and the Secretary of the Treasury is hereby authorized and directed to pay said amounts or installments out of the trust funds standing to the credit of said Indians in the Treasury of the United States, and upon the final determination of said suit the Court of Claims may separately allow said attorneys, or firms of attorneys, such additional compensation as it may deem just and proper considering the nature, extent, character, and value of all services rendered, but in no event shall said additional compensation for the two attorneys or firms of attorneys be in excess of 5 per centum of the total amount recovered; and in no event shall such additional compensation for the two attorneys or firms of attorneys exceed $40,000: Provided, That any such additional compensation shall be fixed by said court in its decree and shall be paid by the Secretary of the Treasury as herein authorized from the trust funds of said Indians standing to their credit in the Treasury of the United States.

Sec. 8. All actual and necessary expenses incurred in the prosecution of said suit by the attorney or attorneys so employed to represent the Chippewa Indians of Minnesota shall be paid by the Secretary of the Treasury as herein authorized as they arise out of the funds standing to the credit of said Indians in the Treasury of the United States

upon first being allowed by said court and certified to the Secretary of the Interior.

Sec. 9. Should either of the Indian committees referred to in section 6 hereof be unable or unwilling within one year [fol. 7] from the approval by the Secretary of the Interior of the selection of said committees, to designate an attorney or firm of attorneys, the Commissioner of Indian Affairs and the Secretary of the Interior, on behalf of the Indians, are hereby authorized to execute a contract with an attorney or attorneys under such terms and conditions as they may deem advisable, not inconsistent with the terms of this Act.

Sec. 10. The proceeds of all amounts, if any, recovered for said Indians shall be deposited in the Treasury of the United States to the credit of the Indians decreed by said court to be entitled thereto, and shall draw interest at the rate of 5 per centum per annum from the date of the judgment or decree. The costs incurred in any suit hereunder shall be taxed against the losing party; if against the United States such costs shall be included in the amount of the judgment or decree, and if against said Indians shall be paid by the Secretary of the Treasury out of the funds standing to their credit in the Treasury of the United States.

Approved, May 14, 1926."

2. On January 14, 1889, and for many years prior thereto, various bands or tribes of Chippewa Indians, formerly a part of the great Chippewa tribe, occupied twelve reservations lying and situated within the limits of the State of Minnesota, which said reservations embraced all the lands within the limits of said state to which the Indian title had not been extinguished. Pursuant to authority contained in the Act of May 15, 1886 (24 Stat. 44), the United States [fol. 8] endeavored to secure agreements with said bands or tribes of Indians, for a readjustment of their land holdings. The agreements negotiated proved unsatisfactory, and the Congress of the United States conceived a definite and special plan for the complete disposition of all the lands and timber embraced in said twelve reservations, which said special plan was embodied in a Bill, H. R. 7935, 50th Cong., 1st Session, and more fully explained in the report of the House Committee on Indian Affairs, H. R. Report #789, 50th Cong., 1st Session, accompanying said Bill, and which

said Bill and Report are made a part hereof by reference. This special plan was to become effective only of assented to in writing by the individual Indians in manner and form therein provided. The said Bill, H. R. 7935, became the act of January 14, 1889 (25 Stat. 642), which is in words and figures, as follows:

"An Act for the Relief and Civilization of the Chippewa Indians in the State of Minnesota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and directed, within sixty days after the passage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and re-[fol. 9] linquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; and such cession and relinquishment shall be deemed sufficient as to each of said several reservations, (except as to the Red Lake Reservation,) if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; and provided that all agreements therefor shall be approved by the President of the United States before taking effect: Provided further, That in any case where an allotment in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deprived thereof or disturbed therein except by his own individual consent separately and previously given, in such form and manner as may be prescribed by the Secretary

of the Interior. And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, and for the purpose of making the allotments [fol. 10] and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and before completing the same, make an accurate census of each tribe or band, classifying them into male and female adults, and male and female minors; and the minors into those who are orphans and those who are not orphans, giving the exact numbers of each class, and making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior and the other with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States shall, be deemed full and ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided.

Sec. 2. That the said commissioners shall, before entering upon the discharge of their duties, each give a bond to the United States in the sum of ten thousand dollars, with sufficient sureties, to be approved by the Secretary of the Interior, and conditioned for the faithful discharge of their duties under this act, and they shall also each take an oath to support the Constitution of the United States and to faithfully discharge the duties of their office, which bonds and oaths shall be filed with the Secretary of the Interior. Said commissioners shall be entitled to a compensation of ten dollars per day for each day actually employed in the discharge of their duties, and for their actual traveling [fol. 11] expenses and board, not exceeding three dollars per day. Said commissioners shall also be authorized to employ a competent interpreter while engaged in the performance of their duties, at a compensation and allowance to be fixed by them, not in excess of that allowed to each of them under this act.

Sec. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservations, shall, under the direction of

said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allot-ed lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; and all allotments heretofore made to any of said Indians on the White Earth Reservation are hereby ratified and confirmed with the like tenure and condition prescribed for all allotments under this act: Provided, however, That the amount heretofore allotted to any Indian on White Earth Reservation shall be deducted from the amount of allotment to which he or she is entitled under [fol. 12] this act: Provided further, That any of the Indians residing on any of said reservations, may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

Sec. 4. That as soon as the cession and relinquishment of said Indian title has been obtained and approved as aforesaid, it shall be the duty of the Commissioners of the General Land Office to cause the lands so ceded to the United States to be surveyed in the manner provided by law for the survey of public lands, and as soon as practicable after such survey has been made, and the report, field-notes, and plats thereof filed in the General Land Office, and duly approved by the Commissioner thereof, the said Secretary of the Interior, upon notice of the completion of such surveys, shall appoint a sufficient number of competent and experienced examiners, in order that the work may be done within a reasonable time, who shall go upon said lands thus surveyed and personally make a careful, complete, and thorough examination of the same by forty-acre lots, for the purpose of ascertaining on which lots or tracts there is standing or growing pine timber, which tracts on which pine timber is standing or growing for the purposes of this

act shall be termed "pine lands," the minutes of such examination to be at the time entered in books provided for that purpose, showing with particularity the amount and quality of all pine timber standing or growing on any lot or tract, the amount of such pine timber to be estimated [fol. 13] by feet in the manner usual in estimating such timber, which estimates and reports of all such examinations shall be filed with the Commissioner of the General Land Office as a part of the permanent records thereof, and thereupon that officer shall cause to be made a list of all such pine lands, describing each forty-acre lot or tract thereof separately, and opposite each such description he shall place the actual cash value of the same, according to his best judgment and information, but such valuation shall not be at a rate of less than three dollars per thousand feet, board measure of the pine timber thereon, and thereupon such lists of lands so appraised shall be transmitted to the Secretary of the Interior for approval, modification, or rejection, as he may deem proper. If the appraisals are rejected as a whole then the Secretary of the Interior shall substitute a new appraisal and the same or original list as approved or modified shall be filed with the Commissioner of the General Land Office as the appraisal of said lands, and as constituting the minimum price for which said lands may be sold, as hereinafter provided, but in no event shall said pine lands be appraised at a rate of less than three dollars per thousand feet board measure of the pine timber thereon. Duplicate lists of said lands as appraised, together with copies of the field-notes, surveys, and minutes of examinations shall be filed and kept in the office of the register of the land office of the district within which said lands may be situated, and copies of said lists with the appraisals shall be furnished to any person desiring the same upon application to the Commissioner of the General [fol. 14] Land Office or to the register of said local land office.

The compensation of the examiners so provided for in this section shall be fixed by the Secretary of the Interior, but in no event shall exceed the sum of six dollars per day for each person so employed, including all expenses.

All other lands acquired from the said Indians on said reservation other than pine lands are for the purposes of this act termed "agricultural lands."

Sec. 5. That after the survey, examination and appraisals of said pine lands has been fully completed they shall be proclaimed as in market and offered for sale in the following manner: The Commissioner of the General Land Office shall cause notices to be inserted once in each week for four successive weeks in one newspaper of general circulation published in Minneapolis, Saint Paul, Duluth and Crookston, Minnesota; Chicago, Illinois; Milwaukee, Wisconsin; Detroit, Michigan; Philadelphia and Williamsport, Pennsylvania; and Boston, Massachusetts, of the sale of said lands at public auction to the highest bidder for cash at the local land office of the district within which said lands are located, said notice to state the time and place and terms of such sale. At such sale said lands shall be offered in Forty-acre parcels, except in case of fractions containing either more or less than forty acres, which shall be sold entire. In no event shall any parcel be sold for a less sum than its appraised value. The residue of such lands remaining unsold after such public offering shall thereafter be subject to private sale for cash at the appraised value of the same upon [fol. 15] application at the local land office.

Sec. 6. That when any of the agricultural lands on said reservation not allotted under this act nor reserved for the future use of said Indians have been surveyed, the Secretary of the Interior shall give thirty days' notice through at least one newspaper published at Saint Paul and Crookston, in the State of Minnesota, and, at the expiration of thirty days, the said agricultural lands so surveyed, shall be disposed of by the United States to actual settlers only under the provisions of the homestead law: Provided, That each settler under and in accordance with the provisions of said homestead laws shall pay to the United States for the land so taken by him the sum of one dollar and twenty-five cents for each and every acre, in five equal annual payments, and shall be entitled to a patent therefor only at the expiration of five years from the date of entry, according to said homestead laws, and after the full payment of said one dollar and twenty-five cents per acre therefor, and due proof of occupancy for said period of five years; and any conveyance of said lands so taken as a homestead, or any contract touching the same, prior to the date of final entry, shall be null and void: Provided, That nothing in this act shall be held to authorize the sale or other disposal under

its provision of any tract upon which there is a subsisting, valid, pre-emption or homestead entry, but any such entry shall be proceeded with under the regulations and decisions in force at the date of its allowance, and if found regular and valid, patents shall issue thereon: Provided, That any [fol. 16] person who has not heretofore had the benefit of the homestead or pre-emption law, and who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either of said laws may make a second homestead entry under the provisions of this act.

Sec. 7. That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools [fol. 17] among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living, in cash, in equal shares: Provided, that Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of

The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made, until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars, less any actual interest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years be expended in procuring live-stock, teams, farming implements, and seed for such of the Indians to the extent of their shares as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the United States shall be fully reimbursed out of such excess, for all the advances of interest made as herein contemplated and other expenses hereunder.

[fol. 18] Sec. 8. That the sum of one hundred and fifty thousand dollars is hereby appropriated, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal and allotments, and the first annual payment of interest herein contemplated and provided for, which money shall be expended under the direction of the Secretary of the Interior in conformity with the provisions of this act. A detailed statement of which expenses, except the interest aforesaid, shall be reported to Congress when the expenditures shall be completed.

Approved, January 14, 1889."

3. Within the time prescribed in Section 1 of said act, three commissioners were appointed, who duly qualified and entered into agreements with all of the different bands or tribes of said Indians in Minnesota for the cessions and relinquishments provided for in said act, which agreements were drawn, procured, assented to and executed, all in strict conformity with the provisions of said act, the said act being made a part of each agreement. The agreements duly executed by the commissioners and the Indians, including

such cessions and relinquishments, were, on March 4, 1890, approved by the President, as provided in said act, and thereupon became effective.

4. Plaintiffs aver that by said agreements so entered into pursuant to said Act there was an immediate and complete [fol. 19] cession of all the right, title and interest of all said bands or tribes of Indians in and to all lands and timber embraced within all said reservations occupied by said bands or tribes, and a complete cession and declaration of trust as to all the right, title and interest of defendant United States in and to all said lands and timber, all upon the specific trusts set forth and declared in said trust agreements and not otherwise. Said agreements did not arise out of or result from the exercise by defendant United States of its plenary power over the property of said Indians, but defendant dealt with said Indians by contract, evidenced by said agreements, and said agreements when executed and approved as aforesaid became binding in all respects upon said Indians and defendant.

And plaintiffs aver that the settlors of said trust were the various bands and tribes of Chippewa Indians in Minnesota and defendant United States, parties to said trust agreements; that the trustee of said trust was and is the defendant United States, which by said trust agreements accepted said trust, and became and ever since has been obligated to carry out said trust agreements according to their plain tenor, and not otherwise, and without compensation or reimbursement for so doing save as in said trust agreements expressly provided; that by the express terms of said trust agreements defendant, as trustee, agreed to, and did assume, the duty and obligation of making the allotments and selling and disposing of the ceded lands and timber thereon in manner and form as in said trust agreements provided, [fol. 20] and after defraying the actual and necessary expenses of "making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals" as expressly specified in said trust agreements, and no other, to deposit the net proceeds in the Treasury of the United States to the exclusive credit and for the exclusive use and benefit of a well-defined class of individuals, embracing from time to time all the living issue of all those persons who were members of said bands or tribes at the time said trust agree-

ments became effective, and the surviving members of said bands or tribes, said designated class being varied from time to time during the trust period only by birth and deaths, and only the members of said class in being at the time each annual payment of the interest money was and may hereafter be made, and who are in being at the expiration of the trust period when the corpus of the trust is distributed, as expressly provided in said trust agreements, being entitled to share therein, and which said class is described in said trust agreements as "all the Chippewa Indians in Minnesota" and in said jurisdictional act above set forth (Act of May 14, 1926, 44 Stat. 355) as "The Chippewa Indians of Minnesota," and is identical with plaintiffs herein.

Plaintiffs further aver that from the inception of said trust the equitable rights and interest of said individual beneficiaries of said trust to receive shares of the interest annually during the continuance thereof, and to equal dis- [fol. 21] tributive shares of the permanent fund upon termination of said trust were and have continued vested, personal and individual interests and rights, not subject to be impaired, changed or modified by defendant, the rights of each individual member of said class ceasing and terminating only upon his or her death prior to the final distribution, and then only as to future payments and distributions.

5. Defendant United States, as such trustee, proceeded with the disposal of said ceded lands and the timber thereon, and, in attempted compliance with that portion of said agreements (Section 7 of said Act of January 14, 1889 (25 Stat. 642), which required that the money accruing from such disposal be placed in the Treasury of the United States to the credit of said class as a permanent fund, defendant established and set up in its said treasury a permanent fund which was designated on defendant's books of account, and is hereinafter referred to as "Chippewas in Minnesota Fund," in which, from time to time, it duly deposited and placed moneys accruing from the disposal of said lands and timbers, and which fund is the interest bearing "permanent fund" referred to in said trust agreements and provided for by Section 7 of said act. In further attempted compliance with its duties as such trustee, defendant set up and established a non-interest bearing fund designated in defendant's books of account and hereinafter referred to as "Interest on Chippewas in Minnesota Fund," in which fund

defendant deposited various amounts from time to time as [fol. 22] and for the interest accruing at the rate of five per cent per annum on the amounts from time to time remaining in said "permanent fund" above described.

6. By said trust agreements, and particularly by that part thereof embraced in Section 7 of said Act of January 14, 1889 (25 Stat. 642), the defendant, United States, was authorized and agreed to advance to the beneficiaries of said trust, as advance interest on said principal sum, the sum of $90,000.00 annually, less any actual interest which might in the meantime accrue on accumulations of said permanent fund, such advance to continue until such time as said permanent fund, exclusive of the deductions in said trust agreement provided for, should equal or exceed the sum of $3,000,000.00. The first appropriation for said purpose was embraced in Section 8 of said act of January 14, 1889, supra, and pursuant to said appropriation and from moneys made available by subsequent annual appropriating acts of Congress passed in each of the years 1891 to 1910, both inclusive, and each appropriating $90,000.00 for such advance interest, the defendant appropriated and expended out of its funds, as such advance interest, in the manner and for the purposes hereinafter more specifically set forth, during the fiscal years 1891 to 1912, inclusive, the total sum of $1,861,289.28.

7. On May 16, 1911, the defendant United States took and withdrew from said "Chippewas in Minnesota Fund," as reimbursement for the amounts so expended as advance interest as aforesaid, the sum of $896,246.93, and from said [fol. 23] "Interest on Chippewas in Minnesota Fund" defendant on said date took as such reimbursement the sum of $874,898.00, and on June 11, 1912, defendant further took from said interest fund as such reimbursement the sum of $89,039.00, making a total withdrawal from said funds of these plaintiffs, on account of reimbursement for advance interest as aforesaid, the sum of $1,860,183.93.

8. Defendant's duty to make such payments of advance interest, and its right to reimburse from said permanent fund therefor, was limited by the express language of said trust agreements to an amount in any one year equal to the difference between the sum of $90,000.00, and the actual interest accruing on accumulations of said permanent fund during such year, it being the intent of said provisions that

while the beneficiaries of said trust should receive at least $90,000.00 per year as interest payments, the same should be paid out of actual interest accruing to extent of such accruals, and that only the deficiency, if any, was to be advanced by the defendant United States, and reimbursed to it out of said permanent fund.

During the fiscal years ending June 30, 1891, to June 30, 1896, inclusive, defendant disbursed in cash payments to the Indians, as provided in said act, advance interest aggregating $468,368.40. During said years no interest accrued on said permanent fund and defendant was lawfully entitled to its said reimbursement out of said principal fund for said amount. During the eight fiscal years ending on June 30th of each of the years 1897 to 1904, both inclusive, defendants [fol. 24] disbursed in cash payments of advance interest to said Indians, as provided in said agreements, the total sum of $492,939.23. During said years the first proceeds of the disposal of the trust property were paid into the Treasury of the United States, and in each of said years interest (amounting to less than $90,000 for any one year) accrued on said accumulations of said permanent fund, the total actual interest thus accruing during said fiscal years being the sum of $334,898.00; all as more fully appears by warrant No. 29, dated January 13, 1904, covering into "Interest on Chippewas in Minnesota fund" the sum of $293,508.71, expressly for "interest at 5 per cent per annum on receipts from the disposal of Chippewa Indian lands under said Act of January 14, 1889, from September 30, 1896, the date when the first deposits were covered into the treasury, to December 31, 1903," and warrant No. 7, dated July 1, 1904, covering into said interest fund the sum of $41,389.29, as additional interest on such receipts to the end of the fiscal year ending June 30, 1904.

Plaintiffs further allege that during each and every fiscal year since the year ending June 30, 1904, the interest actually accruing upon said permanent fund in each year and the amount actually credited thereto as such interest has substantially exceeded $90,000 per year, and that in consequence no reimbursement out of principal was authorized on account of any other or subsequent payment of cash or other expenditure as advance interest.

[fol. 25] "In consequence, plaintiffs aver and allege that the total amount which defendant was under said Act lawfully entitled to reimburse itself out of said 'Chippewas in

Minnesota Fund' on account of advanced interest paid or disbursed by it was the sum of $664,235.72 in accordance with following calculation to wit:

Fiscal Years Ending June 30	Advanced and Disbursed as Interest	Interest Accrued	Reimbursable Balance
1891–1896, incl.	$468,357.40	none	$468,357.40
1897–1904, incl.	530,776.32	$334,898.00	195,878.32
Total	$999,133.72	$334,898.00	$664,235.72

"In consequence plaintiffs aver that in taking and withdrawing from said 'Chippewas of Minnesota Fund' the sum of $896,246.93 on May 16, 1911 as reimbursement for advanced interest under said Act defendant exceeded the amount to which it was lawfully entitled by the sum of $232,011.21 and then and there wrongfully depleted said principal sum to the damage of plaintiffs by said amount."

9. In the year 1890 and in each of the fiscal years ending June 30th of each of the years 1892 to 1910, inclusive, the Congress of the United States appropriated various amounts out of the public moneys of the United States under appropriations which expressly provided that the same were: "To enable the Secretary of the Interior to carry out the act entitled 'An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota and for other pur-[fol. 26] poses,' approved January fourteenth, eighteen hundred eighty-nine." Said act therein referred to was the act of said date above referred to and set forth and embodied in said agreements. The total amounts so made available for said purposes under all of said appropriations was the sum of $2,350,559.00, of which amount so appropriated the officers of defendant expended to and including the end of the fiscal year 1913 the sum of $2,338,625.32. On May 16, 1911, defendant withdrew and took from said "Chippewas in Minnesota Fund" and converted to its own use, as reimbursement for the amounts so expended as aforesaid, the sum of $2,196,036.63; and on June 11, 1912, defendant similarly and for the same purpose took and withdrew from said fund, as such reimbursement for such expenditures, the further sum of $139,550.59, and on May 26, 1913, similarly withdrew as such reimbursement the further sum of $3,241.27, making a total reimbursement to the defendant United States, out of said "Chippewas in Min-

nesota Fund," on account of amounts expended under the appropriations last above described, of $2,338,828.49, and plaintiffs aver that by reason of the reimbursement aforesaid defendant has taken and withdrawn from the said "Chippewas in Minnesota Fund," as its reimbursement for moneys expended under the appropriations to enable the Secretary of the Interior to carry out said act above described, $203.17 more than the total amount expended by it under said appropriations, said excess reimbursement constituting part of the reimbursement of May 26, 1913, above set forth, which said reimbursement then and there wrong-
[fol. 27] fully depleted said principal sum, to the damage of plaintiffs in said amount.

10. Plaintiffs further aver that of said total sum of $2,338,625.32 so appropriated and expended by the defendant, United States, and for which it took reimbursement from the said "Chippewas in Minnesota Fund" as aforesaid, a large portion was expended for such purpose that defendant, United States, was wholly without right and authority in so reimbursing itself therefor. Plaintiffs aver that under said trust agreements, and under said Act of January 14, 1889 (25 Stat. 642), embodied therein, the defendant, United States, was without right or authority to reimburse itself from said "permanent fund" save for such items of expenditures made by it in carrying out said trust agreements as to which reimbursement was expressly authorized by the terms thereof, to-wit, the expenses of making the census and of obtaining the cessions and relinquishments, and of making the removals and allotments, and of completing the surveys and appraisals provided for and contemplated in said Act and agreements, and was wholly without other authority to expend said "permanent fund" or to withdraw moneys therefrom or to impair the same in any manner, save under the provision of said trust agreements and of Section 7 of said Act, hereinafter more specifically set forth, authorizing the appropriation therefrom by Congress of not more than five per cent thereof "for the purpose of promoting civilization and self-support among the said Indians." The sole and exclusive provision and authority for any ex-
[fol. 28] penditure of either principal or interest of said trust funds for education was the provision contained in said Section 7 of said Act as embodied in said agreements for the expenditure of one-fourth of the interest annually

accruing on said "permanent fund" for a system of free schools among the Indians. Plaintiffs aver that notwithstanding the said plain meaning and intent of the said Act and agreements and unmindful of the same, the defendant, United States, unlawfully and without authority reimbursed itself by said withdrawal of $2,196,036.63 made on May 16, 1911, as aforesaid, for expenditures made by it from public funds for the following uses and purposes which plaintiffs aver to have been wholly unauthorized under said trust agreements and not reimbursable out of said principal fund, to-wit: Expenditures for education aggregating $1,033,879.01; expenditures for roads in the sum of $37,714.77; for bridges $3,972.14; for clothing $3,475.18; for provisions and rations $69,275.42; agricultural implements and equipment $29,895.16; for work and stock animals $34,841.80; for feed and care of livestock $23,173.78; for hardware, glass, oils and paints $32,378.62; for medical attention $102,400.90; for Indian houses $170,019.30; for household equipment $14,424.69; for fuel and light $29,672.84; for hospitals and equipment $54.29; for pay of agency mechanics $100,387.58; for miscellaneous agency employees $184,029.22; for agricultural aid $26,031.89; for miscellaneous expenses of operating Indian agencies in Minnesota $8,227.06; for the erection and repair of various Indian agency buildings in Minnesota $15,473.47; for saw and grist mills $18,456.96; for miscel-
[fol. 29] laneous building materials $10,504.48; for pay of Indian farmers $26,785.93; for the burial of Indians $591.79; for the care of indigent Indians $16,479.65; for telephone lines $601.89; for boats and docks $11,189.56; for per capita payments $25.20; for pay of agents and subagents $1,350.00; for pay and expenses of Indian police $86.82; and for the holding of annual celebrations of the White Earth Band $5,061.97. The aggregate of all of said items so unlawfully expended and reimbursed from the said permanent fund is the sum of $2,010,461.37. None of said expenditures were made pursuant to or from moneys appropriated by Congress "for the purpose of promoting civilization and self-support among the said Indians," nor were the same made out of or as any percentage of the said "permanent fund," said expenditures having been made from public moneys and prior to the establishment of said "permanent fund." The benefits of said expenditures were not distributed per capita among the Indians, and of necessity benefited but a small portion of the beneficiaries of said trust, and bore no rela-

tion to the carrying out of said Act and agreements or any operation or expenditure of the defendant in so doing. And plaintiffs allege that by its said taking and diversion from the said "permanent fund" of said sum of $2,010.461.37, as reimbursement for said expenditures above described, defendant then and there, to-wit, on May 16, 1911, wrongfully and unlawfully depleted said "permanent fund" to the damage of these plaintiffs in said amount.

[fol. 30] 11. Plaintiffs further aver that on or about May 16, 1911, defendant took from said "Chippewas in Minnesota Fund," being the "permanent fund" provided for by said agreements, the following amounts to reimburse the defendant for expenditures made for the following purposes, to-wit: for a drainage survey of ceded land $30,453.79; for an Indian school at Leach Lake, Minnesota, $19,782.50; for an Indian school at Red Lake, Minnesota, $35,000.00; for various Indian schools in Minnesota $17,974.54, the total of said amounts so reimbursed being $103,210.83. Defendant further took from said "Chippewas in Minnesota Fund" on the following dates, as reimbursements for amounts theretofore expended by it, the following amounts expended for the following purposes, to-wit: On June 15, 1915, defendant took as reimbursement for moneys theretofore expended for a drainage survey of lands ceded under said Act and agreements the sum of $3,234.88; and on March 28, 1927, defendant took from said fund as reimbursements for amounts theretofore expended by it for education the sum of $1,000.00. Plaintiffs allege that none of the amounts so expended and reimbursed out of principal of said "permanent fund," as aforesaid, was expended for or in connection with the carrying out of all or any part of said Act of January 14, 1889 (25 Stat. 642), or the agreements and cessions entered into pursuant thereto, nor were the same payable or reimbursable from the principal of said "permanent fund," nor were the same made pursuant to any appropriation by Congress of any part of said permanent fund "for the purpose of promoting civilization and self-support among said [fol. 31] Indians"; and the plaintiffs aver that by each of said withdrawals and reimbursements the said "permanent fund" was wrongfully reduced by the amount thereof to the damage of plaintiffs herein, beneficiaries of said trust.

12. Plaintiffs aver that, after the reimbursements authorized by said Act, the only lawful power reserved to

defendant to make disbursements or deductions from said "Chippewas in Minnesota Fund," being the permanent fund referred to in said agreements, were such lawful disbursements of principal as might be made under the following proviso of said Section 7 of said Act of January 14, 1889, embodied in said agreements, to-wit:

"Provided; that Congress may, in its discretion, from time to time during said fifty years, appropriate for the purpose of promoting civilization and self-support among said Indians a portion of said principal sum not exceeding five per centum thereof."

Said "Chippewas in Minnesota Fund" referred to in said proviso as "said principal sum" is elsewhere named and designated in said Act and agreements as a "permanent fund," and plaintiffs aver that by said agreements and by the designation of said principal fund as a permanent fund, as aforesaid, and by said express reservation of said limited power of appropriation from said permanent fund set forth in said proviso above quoted, defendant United States promised and agreed that said permanent fund should not [fol. 32] be subject to the general discretionary control of Congress; and that all discretionary power of the defendant, United States, or its Congress to appropriate or use any portion of said permanent fund either for the benefit of said Indians or otherwise should be restricted to the express power set forth in said quoted proviso.

Plaintiffs further aver that by said agreements it was intended and agreed that said principal fund should in fact be and remain as a "permanent fund" throughout the fifty year trust period therein provided for; that the discretionary power so reserved by said quoted proviso did not authorize Congress from time to time and as often as it should see fit to make repeated separate appropriations each aggregating five per cent of said permanent fund (thus enabling Congress to wholly dissipate the same within a short period of time), but in fact limited the total of all amounts so authorized to be diverted and expended during the entire life of said trust to a total amount not exceeding five per cent of the total of all amounts credited to said permanent fund less the deductions and reimbursements for expenses incurred in carrying out said Act and agreements as expressly authorized thereby.

Plaintiffs aver that the total of all amounts credited to said "Chippewas in Minnesota Fund" is the sum of

$17,662,325.70, and that the total of all such lawful deductions and reimbursements for expenses incurred is the sum of $1,853,793.59, leaving a balance of $15,808,528.11, and that the total amount authorized to be appropriated by Congress out of said permanent fund by said proviso above quoted is [fol. 33] five per cent of said last named sum, or a total for all such appropriations during the entire life of the trust of $790,426.40.

13. Plaintiffs aver that, notwithstanding the express provisions of said trust agreements and the express limitations therein contained upon the expenditure of said principal fund and the authority of defendant and its Congress in regard thereto, defendant, prior to June 30, 1927, expended and disbursed from said permanent fund, under appropriations of Congress purporting to be "for the purpose of promoting civilization and self-support among said Indians," the total sum of $2,526,267.74.

Plaintiffs allege that all disbursements from said permanent fund for promoting self-support and civilization were wholly unlawful and a violation of said trust to the extent of all amounts so expended in excess of and after the expenditure of said sum of $790,426.40, and that the balance thereafter so unlawfully appropriated and disbursed was the sum of $1,735,841.34. Said Acts appropriating said amounts, the fiscal year of the expenditures under each Act, the amount appropriated by each Act and the total amount expended from such appropriations are as set forth in the following tabulation, to-wit:

[fol. 34]

Acts.	Stats.	Fiscal Year	Appropriated	Expended
March 3, 1911	36–1065	1912	$168,500.00	$142,211.93
Aug. 24, 1912	37– 525	1913	166,000.00	145,675.60
June 30, 1913	38– 88	1914	170,000.00	161,598.19
Aug. 1, 1914	38– 590	1915	266,000.00	263,432.63
March 4, 1915	38–1228	1916	161,000.00	155,393.98
May 18, 1916	39– 134	1917	197,250.00	181,729.51
March 2, 1917	39– 977	1918	197,000.00	189,727.25
May 25, 1918	40– 572	1919	186,000.00	182,893.16
June 30, 1919	41– 13	1920	193,000.00	176,983.12
Feb. 14, 1920	41– 419	1921	71,000.00	66,178.82
March 3, 1921	41–1235	1922	105,200.00	98,340.32
May 24, 1922	42– 569	1923	141,570.00	126,333.63
Jan. 14, 1923	42–1190	1924	145,000.00	133,168.54
April 2, 1924	43– 142	1925	190,000.00	172,242.55
June 5, 1924	43– 407		23,150.00	
March 4, 1925	43–1329	1926	185,330.00	159,715.72
" 3, 1925	43–1158, 1162			
May 10, 1926	44– 471, 475	1927	188,500.00	170,642.79
		Total	$2,754,500.00	$2,526,267.74

Plaintiffs allege that by said wrongful appropri[illegible]nd expenditures the said permanent fund was there[illegible]y fully and wrongfully reduced to the extent of sai[illegible] $1,735,841.34, to the damage of the beneficiaries [illegible] trust, plaintiffs, herein, and plaintiffs pray ju[illegible] against defendant for said sum, together with interest at [illegible] rate of 5 per cent per annum on each and all items so wron[illegible]fully expended and disbursed from said fund after the disbursement therefrom of said sum of $790,426.40 for said purposes, from the end of the fiscal year in which such disbursement was made, as indicated by the foregoing table.

14. Plaintiffs further aver that between June 30, 1904, and June 30, 1927, defendant wrongfully and unlawfully took and disbursed from said "Chippewas in Minnesota Fund", without authority of any act of its Congress ap- [fol. 35] propriating the same for the promotion of civilization and self-support, the further sum of $547,421.25. The exact dates of the taking of said moneys and the exact uses and purposes to which the same were put are to plaintiffs unknown, but plaintiffs allege that by said taking said permanent fund was depleted to the extent thereof, to the damage of the beneficiaries of said trust, plaintiffs herein to said amount.

15. Plaintiffs further aver that included in the said sum of $2,526,267.74, disbursed under appropriations purporting to be for the promotion of civilization and self-support among said Indians, and said sum of $547,421.25, disbursed as alleged in paragraph 14 hereof, were the following amounts expended by the defendant for the following purposes, each and all of which plaintiffs allege to have been contrary to the express terms of said trust agreements and not lawfully chargeable to said principal fund, either as intended or calculated to promote civilization and self-support among the Indians, or otherwise, to-wit: For education the sum of $439,592.00; for roads in the ceded lands $67,692.52; for bridges $4,432.42; for donations to the Minnesota Public School System on account of the attendance thereat of certain children of the Chippewa Indians of Minnesota $140,854.85; for donations to the Minnesota Public School System to be used by it in the purchase of school grounds and the erection of school buildings constituting a part of said Public School System and the property of said State $43,662.96; for the purchase of lands for allotments to indi-

[fol. 36] vidual Indians $40,017.31; for clothing distributed to various indigent Indians $4,981.01; for provisions and rations distributed to various individuals $100,650.41; for medical attention to various individuals $492,224.95; for Indian houses erected for various individuals $73,533.47; for household equipment $10,192.85; for fuel and light $77,093.54; for hospitals and equipment available to such individuals as might require medical attention $114,822.61; for pay of mechanics connected with Indian Agencies in Minnesota $86,975.66; for miscellaneous Indian Agency employes $358,383.63; for the transportation of supplies for various individuals $36,924.26; for miscellaneous expenses of defendant's Indian Agencies in Minnesota $44,453.10; for the erection and repair of various buildings and structures including sewer and water systems, etc., of defendant's Indian Agencies in Minnesota $10,869.61; for council and delegations $63,411.67; for pay of Indian police $342.40; for the burial of Indians $2,268.72; for the annual celebration of Indians resident on the White Earth Reservation $8,381.10; for the care of indigent Indians $65,130.89; for the erection and maintenance of telephone lines $13,567.76; for a payment to certain former chiefs of the Mille Lac Band of Chippewa Indians $11,000.00; and for opening Indian Reservations $33.49.

Plaintiffs allege that the State of Minnesota since long prior to 1889 maintained a free public school system co-extensive with the boundaries of said state; that under the Constitution of said state it is expressly made the duty of the legislature thereof to establish and maintain a general and uniform system of public schools and to make such pro-[fol. 37] visions by taxation or otherwise as will secure a thorough and efficient system of public schools in each township in the state (Secs. 1, 2 and 3 Article VIII, Constitution of Minnesota); that in and by the laws of said state it is provided that all schools supported in whole or in part by the state shall be public schools and admission to and tuition therein shall be free to all persons between the ages of 5 and 21 years in the district in which the pupil resides (General Statutes of Minnesota for 1923, Sec. 2741). Under said laws all children of school age in said state, including Indian children, have at all times had access to and been entitled to admission to the public schools of said state in the school district in which such children resided, without any charge

therefor, and the parent and guardian of every such child between the ages of 8 and 16 years is and has been during all of said time required by the laws of said state to keep such child or children regularly in school during the entire school year (General Statutes of Minnesota for 1923 Sec. 3080); and plaintiffs allege that said payments to the Minnesota Public School System resulted in no benefit whatsoever to plaintiffs, were pure gifts or gratuities to said state and were wholly invalid and unauthorized by said Act and agreements.

Plaintiffs allege that said sum of $40,017.31 was wrongfully expended for the purchase of lands for the purpose of making allotments to Indians to whom allotments should have been made from the ceded lands before entry thereon was permitted; said lands were purchased at a price of $20.00 per acre, after prior disposal under said Act and [fol. 38] agreements at the rate of $1.25 per acre.

The amounts above set forth as expended for clothing, provisions and rations, medical attention, Indian houses, household equipment, fuel and light, hospitals and equipment, burial of Indians and care of indigent Indians were not intended or calculated to promote civilization and self-support among the Chippewa Indians of Minnesota and were not distributed per capita or otherwise to said Chippewa Indians as a class, but were expended for certain needy and ailing individuals for the relief of individual distress, said items constituting no proper charge against said permanent fund. Plaintiffs further allege that said amounts expended for hospitals and medical attention were in fact expended pursuant to and as part of a general policy of the Government in the performance of its duty as guardian of its Indian wards throughout the United States in promoting health and prevention of disease among the Indians and constituted normal expenditures by said United States as such guardian and not authorized disbursements from nor proper charges against said principal fund under said Act and agreements.

Plaintiffs further aver that the items above set forth for the pay of mechanics, for miscellaneous employees of defendant's Indian Agency service in Minnesota, for miscellaneous agency expenses and for agency buildings, equipment and repairs were expended in the maintenance of defendant's Indian service in the State of Minnesota and were

not necessitated or caused by or incurred in the carrying out [fol. 39] of said Act of January 14, 1889, or said agreements entered into pursuant thereto. Long prior to said Act of January 14, 1889, and for more than twenty years thereafter, the defendant United States maintained in the State of Minnesota, as in other states, its said Indian service for the purpose of discharging its duty as guardian of the Indians, the maintenance of order among said Indians, the exclusion of liquor from the Indian country, the administration of other and prior treaties with the Indians and the maintenance of such health and other service as in its capacity as such guardian it saw fit to administer, all at its own cost and expense. Plaintiffs allege that said Act of January 14, 1889, and the agreements entered into pursuant thereto, did not provide for nor contemplate that in consequence thereof the defendant, United States, should be relieved of the expense of such operations nor that it should thereafter be entitled to charge to the said funds of plaintiffs any part of its said governmental expense. Plaintiffs allege that said items last above described are items incurred as part of such governmental and administrative expense and as such are wholly unauthorized and unjustified charges against plaintiffs' trust funds.

The total of all of said items above specifically set forth as wrongfully and unlawfully disbursed from and charged to the said permanent fund is the sum of $2,311,493.19. Plaintiffs allege that said sum was wrongfully and unlawfully taken from and charged to said permanent fund at the times said disbursements were made, wrongfully depleting [fol. 40] said permanent fund to the damage of these plaintiffs, beneficiaries of said trust, in said amount.

16. Plaintiffs further aver that during the fiscal years ending on June 30th in each of the years set forth in the following tabulation, defendant, United States, unmindful of its duties and obligations as trustee under said agreements and in utter disregard thereof, wrongfully and unlawfully took and disbursed from said permanent "Chippewas in Minnesota Fund" the respective amounts in said tabulation set forth and used and disbursed the same in making cash payments of principal per capita to persons then in being and claimed by it to have been at the time of such payments beneficiaries of said trust:

Fiscal year ending June 30th	Amount distributed
1917	$1,490,663.40
1918	7,107.22
1919	2,167.27
1920	4,692.80
1921	2,873.20
1922	1,270,666.39
1923	5,491.80
1924	1,364,322.10
1925	774,761.91
1926	768,898.11
1927	3,647.74
Total principal disbursed in cash	$5,684,341.60

Plaintiffs allege that such cash disbursements of said principal permanent fund were wholly unauthorized and wholly unlawful under said Act and agreements; that the beneficiaries of said trust constitute a class changing from time to time by reason of births into said class and deaths of members thereof; that none of said class was entitled or [fol. 41] had any right by reason of membership in said class to have or receive any such payments of principal during the continuance of said trust, nor to assent thereto, either for himself or in any other capacity or for future members of said class, nor to ever have or receive any part of or payment from said permanent fund, save upon final distribution of said trust at the end of the fifty year trust period and then only if such individual member of said class survived to the end of said trust period. By each such payment to each such individual and the consequent wrongful depletion of the permanent fund aforesaid, the interest thereafter available for school purposes and for distribution and the shares of all remaining members of said class and the shares and interset of all persons later born into said class, were unlawfully reduced. Plaintiffs further aver that, during the thirteen years since the first of said cash payments of principal, more than two thousand persons who received more than $750,000.00 of said cash payments have died and their right to receive a share in said permanent fund upon final distribution has thereby terminated,

and that prior to the termination of the trust substantially all of them will be dead.

Plaintiffs further aver that among the payments of shares of principal aforesaid during each of the fiscal years above described, defendant paid out and disbursed large amounts of said principal to persons who were not enrolled on the census provided for in Section 1 of said Act of January 14, 1889, nor subsequently enrolled by any lawful authority nor [fol. 42] issue of any persons lawfully enrolled under said Act, and neither lawful beneficiaries of said trust, nor members of said designated class, plaintiffs herein. Plaintiffs have not exact knowledge as to the total amount of such unlawful payments of principal to said persons not members of said class, but, upon information and belief, alleged that the amount of such unlawful cash payments to said persons not members of said class exceeded $350,000.00. Plaintiffs aver that by all said unlawful distributions of said permanent fund in cash the said permanent fund was wrongfully and unlawfully reduced to the extent of said sum of $5,684,341.60, to the damage of plaintiffs, beneficiaries of said trust, in said amount on the dates when such unlawful distributions were made.

17. Plaintiffs further allege that during the fiscal years ending on June 30th in each of the years 1911 to 1927, inclusive, the defendant expended and disbursed from said "interest on Chippewas in Minnesota Fund" the total sum of $5,726,823.54. Of said sum, the amount of $4,367,302.61 was disbursed in per capita cash payments to persons claimed by defendant to be members of the class, beneficiaries of said trust, plaintiffs herein. During said period, defendant further expended from said interest fund for education, i. e., in the pay of school superintendents, teachers, miscellaneous school employees, school buildings and grounds, provisions, clothing, transportation, fuel and light, medical attention, live stock and the care thereof, manual training supplies, school farm, hardware, glass, oils and [fol. 43] paints, and travel expenses of school employees, the total sum of $1,131,027.08.

Plaintiffs aver that under the express provision of said agreements the only lawful and proper disbursement of said interest fund was in per capita cash payments to the beneficiaries of said trust from time to time, and in the use of one-fourth of said interest under the direction of the Secre-

tary of the Interior for the establishment and maintenance of a system of free schools among said Indians, in their midst, and for their benefit. Notwithstanding said limitation, defendant, during the fiscal years above set forth, unlawfully and wrongfully expended from said interest fund, for purposes other than per capita cash payments, and not for the establishment or maintenance of such system of free schools, the sum of $228,493.85, and plaintiffs allege and claim that said expenditure of said additional amounts was wholly unlawful and a wrongful disbursement of the funds of plaintiffs. Included in said amounts so wrongfully disbursed as aforesaid was the sum of $201,780.81, wrongfully and unlawfully taken from said "Interest on Chippewas in Minnesota Fund" and paid over by said defendant, United States, to various contract schools and particularly to St. Mary's Mission Boarding School at Red Lake, Minnesota, and St. Benedict's Mission Boarding School at White Earth, Minnesota, in payment for the support and education of various Indian children. Said contract schools were sectarian schools and formed no part of any system of free schools as authorized by said trust, and said expenditure in consequence was not authorized or proper under said Act and the [fol. 44] agreements entered into pursuant thereto. The balance of said sum as unlawfully taken and disbursed from said "Interest on Chippewas in Minnesota Fund" included also the following items, expended for the following purposes, none of which were for, or in connection with, any system of free schools among said Indians, to-wit: For roads $15.00, for payments to the Minnesota Public School System for the education of various Indian children $143.91; for expenses in the care and sale of timber $225.00; for provisions and rations $110.98; for agricultural equipment $223.46; for work and stock animals $550.00; for feed and care of livestock $1,278.17; for hardware, glass, oils and paints $4,182.31; for medical attention $17,567.54; for household equipment $1.80; for fuel and light $215.91; for hospitals and equipment $55.37; for miscellaneous agency employees $510.00; for transportation of supplies $356.67; for miscellaneous Indian agency expenses in Minnesota and for agency buildings and repairs therein $697.28; for saw and grist mills $22.50; for miscellaneous building materials $17.50; for erection and maintenance of telephone lines $206.33; for boats, docks, etc. $333.31.

Plaintiffs allege that by said wrongful disbursements of said amounts not expended for per capita cash payments or for the maintenance of a system of free schools among said Indians, to-wit, said amount of $228,493.85, wrongfully depleted and reduced the "Interest on Chippewas in Minnesota Fund" by the amount of such disbursements, and that plaintiffs as beneficiaries of said trust are entitled to have said amount reimbursed to said "Interest on Chippewas in [fol. 45] Minnesota Fund" and distributed and disbursed in accordance with said agreements.

18. Plaintiffs further allege that, out of said sum of $4,367,302.61 disbursed by defendant in per capita cash payments from said "Interest on Chippewas in Minnesota Fund" as aforesaid, defendant, during each of said years above and in the preceding paragraphs set forth, paid out and disbursed large amounts of said interest to persons who were not on the census provided for by Section 1 of said Act, nor issue of any person lawfully enrolled under said Act and agreements and neither lawful beneficiaries of said trust nor members of said designated class, plaintiffs herein.

Plaintiffs have not exact information as to the total amount of such unlawful payments to said persons not entitled thereto but, on information and belief, allege that said amount so unlawfully disbursed was in excess of the sum of $150,000.00, and the plaintiffs aver that, as beneficiaries of said trust, plaintiffs are entitled to the judgment of this court that said amount so wrongfully paid out and disbursed therefrom be by the defendant returned to said "Interest on Chippewas in Minnesota" for distribution and disbursement in accordance with the provisions of said acts and agreements.

Wherefore Plaintiffs pray judgment against defendant:

1. For the sum of $42,776.53, together with interest thereon at the rate of 5 per cent per annum from May 15, [fol. 46] 1911, to be restored to such permanent fund on account of excess reimbursement from said permanent fund as set forth in paragraph 8 hereof

2. For the further sum of $203.17, together with interest thereon at the rate of 5 per cent per annum from May 26, 1913, to be restored to said permanent fund on account of excess reimbursement therefrom as set forth in paragraph 9 hereof.

3. For the further sum of $2,010,461.37, together with interest thereon at the rate of 5 per cent per annum from May 16, 1911, to be restored to said permanent fund on account of the reimbursement for wrongful and unauthorized expenditure as set forth in paragraph numbered 10 hereof.

4. For the further sum of $103,210.83, together with interest thereon at the rate of 5 per cent per annum from May 16, 1911, to be restored to said permanent fund on account of the reimbursement on said date from said permanent fund of expenditures for drainage surveys for an Indian school at Leach Lake, for an Indian school at Red Lake and for various Indian schools in Minnesota, as set forth in paragraph numbered 11 hereof.

5. For the further sum of $4,234.88, together with interest at the rate of 5 per cent per annum on the sum of $3,234.88 from June 15, 1915, and on the sum of $1,000.00 from March 28, 1927, to be restored to said permanent fund on account of the wrongful reimbursement from said permanent fund [fol. 47] of said amounts on said dates, as set forth in paragraph numbered 11 hereof.

6. For the sum of $1,735,841.34, to be restored to said permanent fund on account of the wrongful disbursement of more than 5 per cent thereof under appropriations for self-support and civilization, as set forth in paragraph numbered 13 hereof, with interest at the rate of 5 per cent per annum on all amounts so disbursed in excess of said 5 per cent from the date of the respective disbursements.

7. For the sum of $547,421.25 to be restored to said permanent fund on account of wrongful disbursements therefrom without authority of any Acts appropriating the same for the purpose of promoting civilization and self-support, as set forth in paragraph numbered 14 hereof, together with interest at the rate of 5 per cent per annum on the various amounts so wrongfully disbursed from the dates of the respective disbursements.

8. In the event that the recoveries prayed for in the last two preceding paragraphs hereof, or any part thereof, are denied, then for the sum of $2,311,493.19, to be restored to said permanent fund on account of the wrongful disbursement therefrom of the items set forth in paragraph numbered 15 hereof, together with interest at the rate of 5 per

cent per annum on each item of such disbursement from the date when such disbursement was made.

9. For the sum of $5,684,341.60 to be restored to said permanent fund on account of the wrongful disbursement of [fol. 48] per capita cash payments set forth in paragraph numbered 16 hereof, together with interest at the rate of 5 per cent per annum from the date of each such disbursement.

10. For the sum of $228,493.85 to be restored to said "Interest on Chippewas in Minnesota Fund" on account of the wrongful disbursement from said fund of the items set forth in paragraph numbered 17 hereof, together with interest at the rate of 5 per cent per annum on each of said items of wrongful disbursement from the date of each such disbursement.

11. For the sum of $150,000.00 to be restored to said "Interest on Chippewas in Minnesota Fund" on account of wrongful disbursement of portions of said interest to persons not beneficiaries of said trust and not entitled thereto, as set forth in paragraph numbered 18 hereof, together with interest at the rate of 5 per cent per annum on each item of such wrongful disbursement from date of each such disbursement.

12. For ~~their costs and~~ disbursements.

13. For such other, different or further relief as to the court may seem just and equitable.

Chippewa Indians of Minnesota, Plaintiffs, by Webster Ballinger, Baldwin, Baldwin, Holmes & Mayall, Their Attorneys.

[fols. 49-50] *Duly sworn to by Webster Ballinger and D. S. Holmes. Jurat omitted in printing.*

[fol. 51] III. GENERAL TRAVERSE—Filed October 1, 1935

And now comes the Attorney General, on behalf of the United States, and answering the second amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the second amended petition be dismissed.

Henry W. Blair, Assistant Attorney General.

IV. Argument and Submission of Case

On January 20, 1938, this case was argued and submitted on merits by Mr. Donald S. Holmes, for plaintiff, and by Mr. Raymond T. Nagle and Mr. Walter C. Shoup, for defendant.

V. Further Proceedings in Case

On November 14, 1938, the court filed special findings of fact, conclusion of law, with an opinion by Booth, Ch. J., and entered a judgment dismissing the petition.

On December 2, 1938, the defendant filed a motion for a new trial.

On December 16, 1938, the plaintiffs filed a motion for amended findings of fact and for new trial.

[fol. 52] VI. **Special Findings of Fact, as Amended, Conclusion of Law, Original Opinion Announced November 14, 1938, and Supplemental Opinion by Booth, Ch. J.**—Filed January 9, 1939

Mr. Donald S. Holmes for the plaintiffs. Mr. Webster Ballinger and Holmes, Mayall, Reavill & Neimeyer were on the briefs.

Messrs. Raymond T. Nagle and Walter C. Shoup, with whom was Mr. Assistant Attorney General Carl McFarland, for the defendant. Mr. George T. Stormont was on the brief.

This case having been heard by the Court of Claims, the court, upon the evidence adduced, makes the following

Special Findings of Fact

1. This suit is brought under a special jurisdictional act approved May 14, 1926 (44 Stat. 555), as amended by acts of April 11, 1928 (45 Stat. 423), and June 18, 1934 (48 Stat. 979), which act as so amended provides in part as follows:

Sec. 1. That jurisdiction be, and is hereby, conferred upon the Court of Claims, with right of appeal to the Su-

preme Court of the United States by either party as in other cases, notwithstanding the lapse of time or statute of limitations, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of the Act of January 14, 1889 (25 Stat. L. 642), or arising under or growing out of any subsequent Act of Congress in relation to Indian Affairs which said Chippewa Indians of Minnesota may have against the United States, which claims have not heretofore been deter- [fol. 53] mined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States. In any such suit or suits the plaintiffs, the Chippewa Indians of Minnesota, shall be considered as including and representing all those entitled to share in the final distribution of the permanent fund provided for by Section 7 of the Act of January 14, 1889 (25 Stat. L. 642), and the agreements entered into thereunder: Provided, That nothing herein shall be construed to affect the powers of the Secretary of the Interior to determine the roll or rolls of the Chippewa Indians of Minnesota for the purpose of making any distribution of the permanent Chippewa fund or of the interest accruing thereon or of the proceeds of any judgments: Provided further, That nothing herein shall be construed to authorize the submission to the Court of Claims for determination of any individual claim or claims to enrollment with the Chippewa Indians of Minnesota or to share in the interest or principal of the permanent Chippewa fund or in any funds hereafter acquired: Provided further, That the qualifications necessary to such enrollment shall not be changed or affected in any manner by the provisions of this Act.

Sec. 3. In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Chippewa Indians, and any payment or payments which may have been made by the United States upon any claim against the United States by said Indians shall not operate as an estoppel, but may be pleaded as an offset in such suit or suits as may gratuities, if any, paid to or expended for said Indians subsequent to January 14, 1889.

Sec. 4. If it be determined by the court that the United States, in violation of the terms and provisions of any law, treaty, or agreement as provided in Section 1 hereof,

has unlawfully appropriated or disposed of any money or other property belonging to the Indians, damages therefor shall be confined to the value of the money or other property at the time of such appropriation or disposal, together with interest thereon, at 5 per centum per annum from the date thereof; and with reference to all claims which may be the subject matter of the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Chippewa Indians in and to such money or other property.

2. Plaintiffs, the Chippewa Indians of Minnesota, who constitute the class designated and described in the Act of [fol. 54] January 14, 1889 (25 Stat. 642), as "all of the Chippewa Indians of Minnesota," and the class authorized by the acts aforesaid to maintain suits as therein provided, filed their petition in this court on April 13, 1927, and defendant filed its general traverse thereto on May 23, 1927. Thereafter on August 18, 1930, pursuant to leave granted by order of this court of that date, plaintiffs duly filed their amended petition. On September 27, 1930, defendant filed its general traverse to the amended petition. On August 22, 1935, plaintiffs by leave of court filed their second amended petition and on October 1, 1935, defendant filed its general traverse thereto.

3. On and long prior to the approval of the Act of Congress of January 14, 1889 (supra), the various bands or tribes of Chippewa Indians in Minnesota resided on twelve reservations in that State as to which the Indian title had not been extinguished.

4. The act of January 14, 1889 (supra), entitled "An Act for the Relief and Civilization of the Chippewa Indians in Minnesota," is in words and figures as follows:

An Act for the Relief and Civilization of the Chippewa Indians in the State of Minnesota

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and directed, within sixty days after the pas-

sage of this act, to designate and appoint three Commissioners, one of whom shall be a citizen of Minnesota, whose duty it shall be, as soon as practicable after their appointment, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commission is not required to make and fill the allotments required by this and existing acts, and shall not have been reserved by the Commissioners for said purposes, for the purposes and upon the terms hereinafter stated; and such session and relinquishment shall be deemed sufficient as to each of said several reservations, except as to the Red Lake Reser- [fol. 55] vation, if made and assented to in writing by two-thirds of the male adults over eighteen years of age of the band or tribe of Indians occupying and belonging to such reservations; and as to the Red Lake Reservation the cession and relinquishment shall be deemed sufficient if made and assented to in like manner by two-thirds of the male adults of all the Chippewa Indians in Minnesota; and provided that all agreements therefor shall be approved by the President of the United States before taking effect: Provided further, That in any case where an allotment in severalty has heretofore been made to any Indian of land upon any of said reservations, he shall not be deprived thereof or disturbed therein except by his own individual consent separately and previously given, in such form and manner as may be prescribed by the Secretary of the Interior. And for the purpose of ascertaining whether the proper number of Indians yield and give their assent as aforesaid, and for the purpose of making the allotments and payments hereinafter mentioned, the said commissioners shall, while engaged in securing such cession and relinquishment as aforesaid and before completing the same, make an accurate census of each tribe or band, classifying them into male and female adults, and male and female minors; and the minors into those who are orphans and those who are not orphans, giving the exact numbers of each class, and making such census in duplicate lists, one of which shall be filed with the Secretary of the Interior, and the other

with the official head of the band or tribe; and the acceptance and approval of such cession and relinquishment by the President of the United States shall be deemed full and ample proof of the assent of the Indians, and shall operate as a complete extinguishment of the Indian title without any other or further act or ceremony whatsoever for the purposes and upon the terms in this act provided.

Sec. 2. That the said commissioners shall, before entering upon the discharge of their duties, each give a bond to the United States in the sum of ten thousand dollars, with sufficient sureties, to be approved by the Secretary of the Interior, and conditioned for the faithful discharge of their duties under this act, and they shall also each take an oath to support the Constitution of the United States and to faithfully discharge the duties of their office, which bonds and oaths shall be filed with the Secretary of the Interior. Said commissioners shall be entitled to a compensation of [fol. 56] ten dollars per day for each day actually employed in the discharge of their duties, and for their actual traveling expenses and board, not exceeding three dollars per day. Said commissioners shall also be authorized to employ a competent interpreter while engaged in the performance of their duties, at a compensation and allowance to be fixed by them, not in excess of that allowed to each of them under this act.

Sec. 3. That as soon as the census has been taken, and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes"; and all allotments heretofore made to any of said Indians on the

White Earth Reservation are hereby ratified and confirmed with the like tenure and condition prescribed for all allotments under this act: Provided, however, That the amount heretofore allotted to any Indian on White Earth Reservation shall be deducted from the amount of allotment to which he or she is entitled under this act: Provided further, That any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

Sec. 4. That as soon as the cession and relinquishment of said Indian title has been obtained and approved as aforesaid, it shall be the duty of the Commissioners of the General Land Office to cause the lands so ceded to the United States to be surveyed in the manner provided by law for the survey of public lands, and as soon as practicable after such survey has been made, and the report, field notes, and plats thereof filed in the General Land Office, and duly ap- [fol. 57] proved by the Commissioner thereof, the said Secretary of the Interior, upon notice of the completion of such surveys, shall appoint a sufficient number of competent and experienced examiners, in order that the work may be done within a reasonable time, who shall go upon said lands thus surveyed and personally make a careful, complete, and thorough examination of the same by forty-acre lots, for the purpose of ascertaining on which lots or tracts there is standing or growing pine timber, which tracts on which pine timber is standing or growing for the purposes of this act shall be termed "pine lands," the minutes of such examination to be at the time entered in books provided for that purpose, showing with particularity the amount and quality of all pine timber standing or growing on any lot or tract, the amount of such pine timber to be estimated by feet in the manner usual in estimating such timber, which estimates and reports of all such examinations shall be filed with the Commissioner of the General Land Office as a part of the permanent records thereof, and thereupon that officer shall cause to be made a list of all such pine lands, describing each forty-acre lot or tract thereof separately, and opposite each such description he shall place the actual cash value of the same, according to his best judgment and information, but such valuation shall not be at a rate of less than

three dollars per thousand feet, board measure of the pine timber thereon, and thereupon such lists of lands so appraised shall be transmitted to the Secretary of the Interior for approval, modification, or rejection, as he may deem proper. If the appraisals are rejected as a whole, then the Secretary of the Interior shall substitute a new appraisal and the same or original list as approved or modified shall be filed with the Commissioner of the General Land Office as the appraisal of said lands, and as constituting the minimum price for which said lands may be sold, as hereinafter provided, but in no event shall said pine lands be appraised at a rate of less than three dollars per thousand feet board measure of the pine timber thereon. Duplicate lists of said lands as appraised, together with copies of the field-notes, surveys, and minutes of examinations, shall be filed and kept in the office of the register of the land office of the district within which said lands may be situated, and copies of said lists with the appraisals shall be furnished to any person desiring the same upon application to the Commissioner of the General Land Office or to the register of said local land office.

[fol. 58] The compensation of the examiners so provided for in this section shall be fixed by the Secretary of the Interior, but in no event shall exceed the sum of six dollars per day for each person so employed, including all expenses.

All other lands acquired from the said Indians on said reservation other than pine lands are for the purposes of this act termed "agricultural lands."

Sec. 5. That after the survey, examination and appraisals of said pine lands has been fully completed they shall be proclaimed as in market and offered for sale in the following manner: The Commissioner of the General Land Office shall cause notices to be inserted once in each week for four successive weeks in one newspaper of general circulation published in Minneapolis, Saint Paul, Duluth, and Crookston, Minnesota; Chicago, Illinois; Milwaukee, Wisconsin; Detroit, Michigan; Philadelphia and Williamsport, Pennsylvania; and Boston, Massachusetts, of the sale of said lands at public auction to the highest bidder for cash at the local land office of the district within which said lands are located, said notice to state the time and place and terms of such sale. At such sale said lands shall be offered in Forty-acre parcels, except in case of fractions containing either more or less than forty acres, which shall be sold entire. In no event

shall any parcel be sold for a less sum than its appraised value. The residue of such lands remaining unsold after such public offering shall thereafter be subject to private sale for cash at the appraised value of the same upon application at the local land office.

Sec. 6. That when any of the agricultural lands on said reservation not allotted under this act nor reserved for the future use of said Indians have been surveyed, the Secretary of the Interior shall give thirty days' notice through at least one newspaper published at Saint Paul and Crookston, in the State of Minnesota, and, at the expiration of thirty days, the said agricultural lands so surveyed shall be disposed of by the United States to actual settlers only under the provisions of the homestead law: Provided, That each settler under and in accordance with the provisions of said homestead laws shall pay to the United States for the land so taken by him the sum of one dollar and twenty-five cents for each and every acre, in five equal annual payments, and shall be entitled to a patent therefor only at the expiration of five years from the date of entry, according to said home- [fol. 59] stead laws, and after the full payment of said one dollar and twenty-five cents per acre therefor, and due proof of occupancy for said period of five years; and any conveyance of said lands so taken as a homestead, or any contract touching the same, prior to the date of final entry, shall be null and void: Provided, That nothing in this act shall be held to authorize the sale or other disposal under its provision of any tract upon which there is a subsisting, valid, pre-emption, or homestead entry, but any such entry shall be proceeded with under the regulations and decisions in force at the date of its allowance, and if found regular and valid, patents shall issue thereon: Provided, That any person who has not heretofore had the benefit of the homestead or pre-emption law, and who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either of said laws, may make a second homestead entry under the provisions of this act.

Sec. 7. That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the Treasury of the United States to the credit of all the Chippewa In-

dians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians, in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue [fol. 60] then living, in cash, in equal shares: Provided, that Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the sum of three million dollars, less any actual interest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the first five years be expended in procuring live-stock, teams, farming implements, and seed for such of the Indians to the extent of their shares as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the United States shall be fully reimbursed out of such excess for all the advances of interest made as herein contemplated and other expenses hereunder.

Sec. 8. That the sum of one hundred and fifty thousand dollars is hereby appropriated, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal and allotments, and the first annual payment of interest herein contemplated and provided for, which money shall be expended under the direction of the Secretary of the Interior in conformity with the provisions of this act. A detailed statement of which expenses, except the interest aforesaid, shall be reported to Congress when the expenditures shall be completed.

Approved, January 14, 1889.

5. Within the time prescribed in Section 1 of the act of January 14, 1889 (supra), the President, as therein authorized, appointed as commissioners Hon. H. M. Rice, Rt. Rev. Martin Marty, and Joseph B. Whiting, who duly qualified and entered upon the discharge of their duties. These commissioners met with the various bands or tribes of Chippewa [fol. 61] Indians in Minnesota, held numerous council meetings with them at their various reservations, and while negotiating with each of said bands or tribes prepared census rolls, as the act provided, and concluded agreements of cession with all the different bands or tribes, as the act provided, and for the uses and purposes therein stated. The act of January 14, 1889, was embodied in each of the agreements, either verbatim or by express reference, and each such agreement recited the act had been read, interpreted, and thoroughly explained to the understanding of the Indians who consented and agreed to the act and accepted and ratified the same, and each agreement provided that the lands in question were ceded for the purposes and upon the terms stated in the act. The commissioners, after completing the census provided for by the act, and after the negotiation and execution of all the agreements, as aforesaid, on or about December 26, 1889, transmitted the same, together with the report of their transactions in connection therewith, through the Commissioner of Indian Affairs to the Secretary of the Interior. The Secretary of the Interior, on or about January 30, 1890, transmitted the commissioners' report and the agreements, together with his report thereon, to the President and, on March 4, 1890, the President accepted and approved the cessions and relinquish-

ments thus effected, endorsed and signed his approval upon each of the agreements made with the several tribes or bands of Chippewa Indians of Minnesota, and on March 4, 1890, transmitted these reports and agreements to the Congress.

6. Defendant proceeded with the disposal of the ceded lands and the timber thereon and established in the Treasury of the United States a permanent fund which was designated on defendant's books of account and is hereinafter referred to as "Chippewas in Minnesota Fund," in which from time to time it covered, deposited, and credited moneys accruing from the disposal of the ceded lands and timber, and which fund is the interest-bearing "permanent fund" referred to and provided for by Section 7 of the act. Defendant further established a non-interest-bearing fund designated in defendant's books of account and hereinafter referred to as "Interest on Chippewas of Minnesota Fund," [fol. 62] into which fund defendant covered various amounts from time to time as and for the interest accruing at the rate of 5% per annum on the amounts from time to time remaining in said permanent fund above described.

7. The first appropriation made by defendant for advance interest as provided in Section 7 of the act of January 14, 1889 (supra), was made by Section 8 of that act. Pursuant to this and subsequent annual acts of Congress passed in each of the years 1891 to 1910, both inclusive, each appropriating the sum of $90,000 for "Advance Interest to Chippewas in Minnesota, Reimbursable," the defendant appropriated out of public funds a total sum of $1,890,000. During the fiscal years 1891 to 1912, inclusive, defendant expended out of public funds so appropriated for the use and benefit of the Chippewa Indians of Minnesota the total sum of $1,861,289.28, of which sum $1,386,048.53 was disbursed in per capita cash payments to these Indians as advance interest in accordance with the act and agreements, and the balance of $475,240.75 was disbursed for education, medical attention, hardware, glass, oils and paints, boats, docks, etc., and miscellaneous agency expenses.

Thereafter and during the fiscal years 1913 to 1925, inclusive, the defendant further expended out of these appropriations in per capita cash payments to these Indians for their use and benefit further sums totaling $8,640.11, making the total amount so expended out of these appro-

priations during the fiscal years 1891-1925, both inclusive, $1,869,929.39.

No interest actually accrued on the principal "Chippewas in Minnesota Fund" prior to the fiscal year ending June 30, 1897, the first deposits therein having been covered on September 30, 1896, and the first credit to "Interest on Chippewas in Minnesota Fund" was for interest accrued during the fiscal years 1897 to 1904, inclusive, aggregating $334,898, which sum was covered into the interest fund on January 13, 1904, and July 1, 1904. All such interest thereafter accruing was covered into the "Interest on Chippewas in Minnesota Fund" semi-annually as the same accrued. There were no disbursements from the "Interest on Chippewas in Minnesota Fund" prior to the fiscal year ending June 30. 1911, when amounts aggregating $26,741.79 were disbursed therefrom for education.

[fol. 63] The amounts so appropriated for advance interest and the amounts actually disbursed by defendant out of public funds as such advance interest under the appropriations aforesaid and the interest actually accruing on the "Chippewas in Minnesota Fund," during each fiscal year from 1891 to 1912, inclusive, are correctly shown in the following table:

Fiscal year ending June 30th	Appropriated for advance interest	Disbursed as advance interest	Interest actually accrued on Chippewa Fund
1891	$90,000.00	$73,677.24	$0.00
1892	90,000.00	79,520.65	0.00
1893	90,000.00	73,481.77	0.00
1894	90,000.00	78,543.40	0.00
1895	90,000.00	82,370.75	0.00
1896	90,000.00	80,763.59	0.00
1897	90,000.00	86,000.91	12,078.30
1898	90,000.00	14,632.78	14,068.70
1899	90,000.00	95,211.39	35,425.41
1900	90,000.00	77,711.42	39,934.90
1901	90,000.00	57,076.41	47,619.67
1902	90,000.00	52,509.25	54,775.93
1903	90,000.00	55,439.75	57,913.80
1904	90,000.00	92,194.71	73,081.49
1905	90,000.00	100,865.04	116,116.35
1906	90,000.00	154,051.36	159,041.05
1907	90,000.00	181,655.46	216,242.25
1908	90,000.00	169,427.73	257,413.24
1909	90,000.00	85,776.31	297,96..18
1910	90,000.00	89,086.95	321,143.15
1911	90,000.00	89,082.98	345,568.34
1912	0.00	1,209.43	204,708.89
Total	$1,890,000.00	$1,861,289.28	$2,253,093.65

During the fiscal years ending June 30, 1891 to 1896, inclusive, during which no interest actually accrued on the "Chippewas in Minnesota Fund," the total disbursements by defendant as advance interest, as aforesaid, aggregated $468,357.40.

During the fiscal years ending June 30, 1897, to 1904, inclusive, during each of which years the interest actually accrued on the "Chippewas in Minnesota Fund" was less than $90,000 per year, the total disbursements by defendant as advance interest, as aforesaid, aggregated $530,770.62, and the total interest so accruing during those years aggregated $334,898.

During each of the fiscal years sending June 30, 1905, to 1912, inclusive, the interest actually accrued on the "Chippewas in Minnesota Fund" exceeded $90,000 per year and exceeded the total amount disbursed by defendant as interest and advance interests during such year.

[fol. 64] 8. The first appropriation made by Congress for advance interest, as provided by the act of January 14, 1889, was made by section 8 of the act and set up on the books of the Treasury as "Advance Interest to Chippewas in Minnesota (Reimbursable)." By subsequent annual acts passed in the years 1891 to 1910, inclusive, Congress in each act appropriated $90,000 for the same account. The total amount thus appropriated was $1,800,000. During the fiscal years 1891 to 1925, inclusive, expenditures were made from the advance interest account for the use and benefit of the Chippewa Indians in Minnesota, amounting to $1,869,929.39.

Reimbursement of the major part of said expenditures was taken as follows: on May 16, 1911, from the "Chippewas in Minnesota Fund," $896,246.93; and on May 16, 1911, and various other dates to March 28, 1927, from the "Chippewas in Minnesota Interest Fund," $973,504.52, making a total reimbursement of $1,869,751.45, or $177.94 less than the total disbursements on this account.

9. In each of the years 1890 and 1892 to 1910, inclusive, Congress made appropriations out of public funds in the total sum of $2,350,559. The purpose was stated in the following (or comparable) words: "To enable the Secretary of the Interior to carry out an Act entitled 'An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota, and for other purposes,' approved January

penditures thereunder should be reimbursed to the United States "from the proceeds of sales of land ceded by the Chippewa Indians under the act [of 1889]" or "out of the proceeds of sale of their lands." These appropriations were carried to the account entitled "Relief and Civilization of Chippewas in Minnesota (Reimbursable)."

During the fiscal years 1891 to 1913, inclusive, expenditures in the total sum of $2,338,625.32 were made under authority of the Secretary of the Interior for the use and benefit of these Indians. Included in the total were expenditures amounting to $328,163.95 made for expenses of the Chippewa Commission; for surveying, allotting, sale, etc., of lands; for expenses, care, and sale of timber; for removals; for transportation, etc., of supplies; for councils and delegations; and for examining and appraising land. The balance [fol. 65] of the total sum, amounting to $2,010,461.37, was expended for education; roads; bridges; clothing; provisions and other rations; agricultural implements and equipments; work and stock animals; feed and care of livestock; hardware, glass, oils, and paints; medical attention; Indian houses; household equipment; fuel and light; hospitals and equipment; pay of mechanics; miscellaneous employees; agricultural aid; miscellaneous agency expenses; agency buildings and repairs; saw and grist mills; miscellaneous building material; pay of farmers; burial of Indians; care of indigent Indians; telephone lines; boats, docks, etc., per capita cash payments; pay of agents and subagents; pay and expenses of Indian police; and annual celebration of the White Earth band.

Reimbursement for all these expenditures was taken from the "Chippewas in Minnesota Fund," as follows: on May 16, 1911, $2,196,036.63; on June 11, 1912, $139,550.59, and on May 26, 1913, $3,241.27, making a total of $2,338,828.49.

10. In addition to the sum of $328,163.95 hereinbefore set forth, the amounts disbursed by defendant for the use and benefit of the Chippewa Indians of Minnesota pursuant to appropriations by Congress to enable the Secretary of the Interior to carry out the act of January 14, 1889, and for which defendant was reimbursed out of the "Chippewas in Minnesota Fund" on May 16, 1911, June 11, 1912, and May 26, 1913, included expenditures made by it for the following uses and purposes: Expenditures for education aggregating $1,033,879.01; expenditures for roads in the sum of

$37,714.77; for bridges, $3,972.14; for clothing, $3,475.18; for provisions and rations, $69,275.42; agricultural implements and equipment, $29,895.16; for work and stock animals, $34,841.80; for feed and care of livestock, $23,173.78; for hardware, glass, oils and paints, $32,378.62; for medical attention, $102,400.90; for Indian houses, $170,019.30; for household equipment, $14,424.69; for fuel and light, $29,672.84; for hospitals and equipment, $54.29; for pay of agency mechanics, $100,387.58; for miscellaneous agency employees, $184,029.22; for agricultural aid, $26,031.89; for miscellaneous expenses of operating Indian agencies in Minnesota. $8,227.06; for the erection and repair of various In-
[fol. 66] dian agency buildings in Minnesota, $15,473.47; for saw and grist mills, $18,456.96; for miscellaneous building materials, $10,504.48; for pay of Indian farmers, $26,785.93; for the burial of Indians, $591.79; for the care of indigent Indians, $16,479.65; for telephone lines, $601.89; for boats and docks, $11,189.56; for per capita payments, $25.20; for pay of agents and subagents, $1,350.00; for pay and expenses of Indian police, $86.82; and for the holding of annual celebrations of the White Earth Band, $5,061.97. The aggregate of all these items is $2,010,461.37.

11. On or about May 16, 1911, defendant, by acts of Congress reimbursed itself from the "Chippewas in Minnesota Fund" for expenditures made for the use and benefit of the Chippewa Indians of Minnesota for the following purposes: For a drainage survey of ceded land, $30,453.79; for an Indian school at Leech Lake, Minnesota, $19,782.50; for an Indian school at Red Lake, Minnesota, $35,000; for Indian school buildings for Chippewa Indians in Minnesota, $17,974.54, the total of the amounts so reimbursed being $103,210.83.

12. Defendant, by acts of Congress, reimbursed itself from the "Chippewas in Minnesota Fund" on the following dates for amounts previously expended by it for the use and benefit of the Chippewa Indians of Minnesota as follows: On June 15, 1915, for drainage surveys on lands ceded under the Act of January 14, 1889, and the agreements entered into thereunder, $3,234.88, and on March 28, 1927, for education of Chippewas in Minnesota, $1,000.

13. The total amount covered by defendant into or by it credited to the "Chippewas in Minnesota Fund" either

as proceeds of sales of land and timber or from other sources from the dates of the making of the cessions and agreements aforesaid to the end of the fiscal year 1927, the last date covered by the General Accounting Office Report herein, was $17,662,325.70. The total amount withdrawn from this fund by defendant as reimbursement for its advances of interest and other expenditures for the use and benefit of the Chippewa Indians of Minnesota from its appropriations made by Congress out of public funds was $3,967,465.79, leaving a net total of all credits to the fund, exclusive only of the amounts reimbursed as aforesaid, of $13,694,859.91.

[fol. 67] 14. In each of the years from 1889 to 1910, inclusive, and in 1914 and 1915 Congress made appropriations from public funds for the use and benefit of the Chippewa Indians in Minnesota. The total amount appropriated was $4,986,495.55. The acts making such appropriations in every instance directed that expenditures thereunder be reimbursed to the United States from the funds of the Chippewa Indians in Minnesota. The appropriations were allocated to and set up on the books of the Treasury in nine separate accounts designated as:

Relief and Civilization of Chippewas in Minnesota (Reimbursable).

Advance Interest to Chippewas in Minnesota (Reimbursable).

Negotiating with, and Civilization of, Chippewas of Minnesota (Reimbursable).

Surveying and Allotting for Chippewas in Minnesota (Reimbursable).

Indian Schools, Chippewas in Minnesota: Buildings (Reimbursable).

Indian School, Red Lake, Minn.: Buildings (Reimbursable).

Indian School, Leech Lake, Minnesota: Buildings (Reimbursable).

Drainage Survey, Chippewas of Minnesota (Reimbursable).

Education, Chippewas of Minnesota (Reimbursable).

The total amount expended from these nine accounts for the use and benefit of the Chippewa Indians in Minnesota was $4,941,029.66.

Reimbursement from the funds of these Indians was taken as follows:

From the principal fund:		
May 16, 1911		$3,820,439.05
June 11, 1912		139,550.59
May 26, 1913		3,841.27
June 15, 1915		3,234.88
March 28, 1927		1,000.00
		3,967,465.79
From the interest fund:		
May 16, 1911, to March 28, 1927	$973,504.52	
July 5, 1916 (additional)	84.58	
		973,589.10
Total		4,941,054.89

[fol. 68] The total amount reimbursed exceeded the total expenditure by $25.23.

15. Annually during the years 1911 to 1926, inclusive, Congress appropriated and made available during the fiscal years 1912 to 1927, inclusive, various amounts, aggregating $2,754,500, from the "Chippewas in Minnesota Fund" (the principal fund) for promoting civilization and self-support among the Chippewa Indians of Minnesota.

The following table shows (a) the fiscal years, (b) the balance in the "Chippewas in Minnesota Fund" at the beginning of each fiscal year, (c) the total amount appropriated and made available for each fiscal year, (d) citations to the appropriation acts, and (e) for each fiscal year the relation by percentage of the items in column (c) to the items in column (b):

Fiscal year	Amount of fund	Amount appropriated	Stat.	Percent of fund
1912	$4,099,606.24	$168,500.00	36-1065	4.1
1913	4,382,924.96	166,000.00	37-525	3.7
1914	4,995,438.82	170,000.00	38-88, 90	3.4
1915	5,740,995.54	266,000.00	38-590	4.6
1916	6,108,399.64	161,000.00	39-1228	2.6
1917	6,277,587.96	197,250.00	39-134	3.1
1918	5,605,827.26	197,000.00	39-977	3.5
1919	5,788,770.28	186,000.00	40-572	3.2
1920	5,839,863.52	193,000.00	41-13	3.3
1921	5,928,211.49	71,000.00	41-419	1.2
1922	6,091,814.71	105,200.00	41-1235	1.7
1923	4,709,719.30	141,576.00	42-569	3.0
1924	6,192,937.48	145,000.00	42-1190	2.3
1925	4,860,394.96	213,150.00	43-12, 407, 411, 1329	4.3
1926	3,942,636.10	185,330.00	43-1158, 1162	4.7
1927	4,855,308.99	188,500.00	44-471, 475	3.8
Total Appropriated		2,754,500.00		

The Secretary of the Interior, in a report dated November 8, 1927 (filed on March 5, 1930), at pp. 6 and 7 stated:

Attention is invited to that part of Section 7 of the Act of January 14, 1889, providing as follows:

"Provided, That Congress may, in its discretion, from time to time during said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of the principal sum, not exceeding five per cent thereof."

The following statement shows the amounts appropriated annually from 1912 to 1927, inclusive, and the approximate expenditures which included sums for agency expenses, [fol. 69] maintenance of schools, aiding indigent Chippewa Indians, construction and support of hospitals, tuition of Chippewa children enrolled in public schools, purchases of homes for Indians, etc. [Citations to Statutes, which agree substantially with those in the table next above, are here omitted]:

Fiscal year	Appropriated	Expended
1912	$168,500.00	$142,211.93
1913	166,000.00	145,675.60
1914	170,000.00	161,598.19
1915	266,000.00	263,432.63
1916	161,000.00	155,393.98
1917	197,250.00	181,729.51
1918	197,000.00	189,527.25
1919	186,000.00	182,893.16
1920	193,000.00	176,983.12
1921	71,000.00	66,178.82
1922	105,200.00	98,340.32
1923	141,570.00	126,333.63
1924	145,000.00	133,168.54
1925	190,000.00	172,242.55
	23,150.00	
1926	185,330.00	159,715.72
1927	188,500.00	170,642.79
Total	2,754,500.00	2,526,267.74

The report of the Comptroller General contains an analysis of all expenditures made from the "Chippewas in Minnesota Fund" during the fiscal period 1905-1927.

16. In addition to the amounts taken by defendant from the "Chippewas in Minnesota Fund" as reimbursement for its advances of interest and certain of its expenses under the Act of January 14, 1889, amounts taken by defendant from that fund to reimburse itself for moneys expended

under appropriations to enable the Secretary of the Interior to carry out the Act of January 14, 1889, and for other purposes, the amounts expended by defendant from that fund pursuant to appropriations made by Congress "for the purposes of promoting civilization and self-support among said Indians," and amounts taken by defendant under congressional authority from the fund and disbursed by it in per capita cash payments for the use and benefit of the Chippewa Indians of Minnesota as hereinafter set forth, defendant, between June 30, 1904, and June 30, 1927, took and disbursed from the "Chippewas in Minnesota Fund" for the use and benefit of the Chippewa Indians of Minnesota without authority of any act of its Congress specifically ap- [fol. 70] propriating the same "for the purpose of promoting civilization and self-support," the further sum of $547,421.25.

The said sum of $547,421.25 is part of the whole sum of $669,606.34 expended by defendant from the "Chippewas in Minnesota Fund" for the benefit of the Chippewa Indians of Minnesota under authority of the act of January 14, 1889 (supra), for expenses, surveying, alloting, sale, etc., of lands; expenses, care, and sale of timber; removals; transportation of supplies; councils and delegations; examining and appraising land, as more fully set out hereinafter.

17. Included in the amounts disbursed by defendant from the "Chippewas in Minnesota Fund" other than the amounts disbursed therefrom for purposes authorized by the act of January 14, 1889 (supra), and as per capita cash payments of principal as hereinafter set forth were the following amounts expended by defendant for the use and benefit of the Chippewa Indians of Minnesota for the following purposes: For education, $439,592.00; for roads, $67,692.52; for bridges, $4,432.42; for payments to the Minnesota Public School System as tuition on account of the attendance of Chippewa Indian children, $140,854.85; for payments to the Minnesota Public School System for the purchase of school grounds and the erection of school buildings constituting a part of the Public School System and the property of the State, $43,662.96; for the purchase of lands for allotments to individual Indians, $40,017.31; for clothing, $4,981.01; for provisions and rations, $100,650.41,

for medical attention to Indians requiring same, $492,224.95; for Indian houses erected for various individuals, $73,533.47; for household equipment, $10,192.85; for fuel and light, $77,093.54; for hospitals and equipment available to such individuals as might require hospitalization, $114,822.61; for pay of mechanics connected with Indian Agencies in Minnesota, $86,975.66; for miscellaneous Indian Agency employees, $358,383.63; for the transportation of supplies, $36,924.26; for miscellaneous expenses of Indian Agencies in Minnesota, $44,453.10; for the erection and repair of various buildings and structures, including sewer and water systems, etc., of Indian Agencies in Minnesota, $10,869.61; for council and delegations, $63,411.67; for pay of [fol. 71] Indian police, $342.40; for the burial of Indians $2,268.72; for the annual celebration of the White Earth Band, $8,381.10; for the care of indigent Indians, $65,130.89; for the erection and maintenance of telephone lines, $13,567.76; for a payment to certain former chiefs of the Mille Lac Band of Chippewa Indians, $11,000.00; and for opening Indian Reservations, $33.49. The total of these amounts is $2,311,493.19.

The foregoing amounts were disbursed by defendant from the "Chippewas in Minnesota Fund" during the fiscal years ending June 30, 1905, to June 30, 1927, both inclusive, and the amounts so disbursed for each of the purposes during each of the fiscal years correctly appear in Disbursement Schedule No. 10, pages 182-233, General Accounting Office Report herein, which is hereby referred to and made a part hereof as a basis for the computation of interest.

18. In section 8 of the act of January 14, 1889, Congress appropriated from public funds $60,000 to pay "for procuring the cession and relinquishment, making the census, surveys, appraisals, removal, and allotments." This amount was carried to the account entitled "Negotiating with, and Civilization of, Chippewas of Minnesota (Reimbursable)." During the fiscal years 1889 to 1894, inclusive, expenditures for expenses of the Chippewa Commission amounting to $57,023.53 were made and on May 16, 1911, reimbursed to the United States from the principal fund.

In each of the years 1890 to 1899, inclusive, and in 1903, 1904, and 1906, Congress appropriated from public funds a

total sum of $567,936.55 for the carrying out of the act of 1889, and particularly for surveys, appraisals, removals, allotments, expenses of the Commission, etc. This amount was carried to the account entitled "Surveying and Allotting for Chippewas in Minnesota (Reimbursable)."

During the fiscal years 1891 to 1907, inclusive, expenditures for expenses of the Commission, surveying, allotting, sale, etc., of lands; expenses, care and sale of timber, and examining and appraising land, amounting to $567,921.13, were made, and on May 16, 1911, reimbursed to the United States from the principal fund.

[fol. 72] 19. Disbursements were made for the benefit of the Chippewa Indians of Minnesota from "Chippewas in Minnesota Fund" during the fiscal years in the amounts following:

Fiscal year:	Disbursements	
1905	$29,499.39	
1906	44,626.49	
1907	57,003.27	
1908	45,805.07	
1909	39,678.15	
1910	50,454.59	
1911	35,961.44	
1912	164,606.39	
1913	173,821.06	
1914	198,720.78	
1915	204,477.95	
1916	227,560.09	
1917	1,691,593.98	
1918	207,399.70	
1919	215,432.80	
1920	201,197.63	
1921	107,899.54	
1922	1,358,712.79	
1923	117,870.07	
1924	1,500,930.90	
1925	973,377.13	
1926	929,190.64	
1927	182,210.74	
Total		$8,758,030.59

The purposes for which these disbursements were made are as follows:

Per capita cash payments		$5,684,341.60.
Expenses surveying, allotting sale, etc., of lands	$18,762.69	
Expenses, care and sale of timber	531,484.43	
Removals	942.04	
Transportation of supplies	36,924.26	
Councils and delegations	63,411.67	
Examining and appraising land	18,081.25	
		669,606.34

[fol. 73]

Drainage surveys	$74.99	
Agricultural implements and equipment	19,242.77	
Work and stock animals	19,184.56	
Feed and care of livestock	49,303.91	
Hardware, glass, oils, and paints	10,083.51	
Agricultural aid	23,243.76	
Saw and grist mills	7,876.17	
Miscellaneous building material	6,103.28	
Pay of interpreters	8,341.42	
Pay of farmers	42,485.82	
Boats, docks, etc.	6,974.08	
Investigating land frauds	11.12	
		$192,925.39
Education	439,592.00	
Roads	67,692.52	
Bridges	4,432.42	
Payment to Minnesota Public School System for tuition	140,854.85	
For buildings and grounds	43,662.96	
Purchase of land for allotment	40,017.31	
Clothing	4,981.01	
Provisions and other rations	100,650.41	
Medical attention	492,224.95	
Indian houses	73,533.47	
Household equipment	10,192.85	
Fuel and light	77,093.54	
Hospitals and equipment	114,822.61	
Pay of mechanics	86,975.66	
Miscellaneous employees	358,383.63	
Miscellaneous Agency expenses	44,453.10	
Agency buildings and repairs	10,869.61	
Pay and expenses of Indian police	342.40	
Burial of Indians	2,268.72	
Annual celebration of White Earth Band	8,381.10	
Care of indigent Indians	65,130.89	
Telephone lines	13,567.76	
Payment to Mille Lac chiefs	11,000.00	
Opening Indian reservations	33.49	
		2,211,157.26
Total disbursements		8,758,030.59

20. During the period January 14, 1889, to June 30, 1934, the United States expended out of its public funds for the use and benefit of the Chippewa Indians of Minnesota the sum of $5,065,878.95, no part of which sum has been reimbursed to the United States.

[fol. 74] 21. In accord with the following acts of Congress, May 18, 1916 (39 Stat. 135); November 19, 1921 (42 Stat. 221); January 25, 1924 (43 Stat. 1); January 30, 1925 (43 Stat. 798); and February 19, 1926 (44 Stat. 7), per capita payments were made by the Secretary of the Interior from the principal fund in the Treasury to the credit of plaintiffs. The amounts and dates of payments appear in the following table:

Fiscal year ending June 30th:	Amount distributed
1917	$1,490,668.40
1918	7,107.22
1919	2,167.37
1920	4,962.80
1921	2,873.20
1922	1,270,666.39
1923	5,491.80
1924	1,353,096.66
1925	774,761.91
1926	768,898.11
1927	3,647.64
Total principal disbursed in cash	5,684,341.50

22. Since the per capita distributions out of said permanent funds made by defendant as set forth in the preceding finding a number of persons receiving such payments have died; the record herein shows the persons so dying, and the amounts distributed to such decedents only to June 30, 1927; and the amounts so disbursed by defendant in per capita payments out of said principal fund to persons who thereafter died, and the respective fiscal years during which such amounts were so disbursed to such decedents are shown by the following tabulation:

Fiscal year ending June 30th:	Amount
1917	$231,162.00
1922	91,300.00
1924	58,700.00
1925	21,300.00
1926	13,050.00
Total	415,512.00

23. In addition to the ratification provided in the acts set forth in Finding 21, each Indian receiving a payment under [fol. 75] said acts was required by the Secretary of the Interior to sign the following form of release:

In consideration of the payment represented by check No. —, dated —— —, ——, I hereby release and quitclaim unto the United States forever all my right, title, and interest in and to that portion of the principal fund of the Chippewa

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Indians of Minnesota arising under the act of January 14, 1889, which has been or shall be distributed per capita to said Indians under the Act of ——, to the extent of $—.

CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides as a conclusion of law that the plaintiffs are not entitled to recover and the petition is therefore dismissed.

ORIGINAL OPINION ANNOUNCED NOVEMBER 14, 1938

BOOTH, Chief Justice, delivered the opinion of the court:

The special jurisdictional act enabling the plaintiff Indians to sue in this court appears in Finding 1. The case grows out of alleged failure of the defendant to discharge its obligations under the act of January 14, 1889 (25 Stat. 642), and especially Sections 7 and 8 of that act. A judgment for a large sum of money is sought.

The act of January 14, 1889, has been several times before the Supreme Court. It is unnecessary to elaborate upon what the Supreme Court held to be its scope and purpose. It is sufficient for the purposes of this case to state that Congress in enacting the act clearly intended to put in effect the Government's prevailing Indian policy, i. e., secure the dissolution of the various Indian Bands and Tribes involved, allot them lands in severalty, dispose of surplus lands for their benefit, and otherwise seek to civilize the Indians themselves. This act appears in Finding 4.

The plaintiff Indians assented to the provisions of the act of 1889, supra. The various bands ceded their lands in accord with the same. Allotments were made and accepted and the surplus lands, both timber and agricultural, were sold, accumulating a sum of money aggregating in excess of sixteen million dollars.

[fol. 76] Inasmuch as the crucial issue in this case is more or less restricted to Sections 7 and 8 of the act of 1889, despite repetition, we insert at this point the provisions of the same, to wit:

Sec. 7. That all money accruing from the disposal of said lands in conformity with the provisions of this act shall, after deducting all the expenses of making the census, of obtaining the cession and relinquishment, of making the removal and allotments, and of completing the surveys and appraisals, in this act provided, be placed in the treasury of the United States to the credit of all the Chippewa Indians in the State of Minnesota as a permanent fund, which shall draw interest at the rate of five per centum per annum, payable annually for the period of fifty years, after the allotments provided for in this act have been made, and which interest and permanent fund shall be expended for the benefit of said Indians in manner following: One-half of said interest shall, during the said period of fifty years, except in the cases hereinafter otherwise provided, be annually paid in cash in equal shares to the heads of families and guardians of orphan minors for their use; and one-fourth of said interest shall, during the same period and with the like exception, be annually paid in cash in equal shares per capita to all other classes of said Indians; and the remaining one-fourth of said interest shall, during the said period of fifty years, under the direction of the Secretary of the Interior, be devoted exclusively to the establishment and maintenance of a system of free schools among said Indians, in their midst and for their benefit; and at the expiration of the said fifty years, the said permanent fund shall be divided and paid to all of said Chippewa Indians and their issue then living in cash, in equal shares: Provided, That Congress may, in its discretion, from time to time, during the said period of fifty years, appropriate, for the purpose of promoting civilization and self-support among the said Indians, a portion of said principal sum, not exceeding five per centum thereof. The United States shall, for the benefit of said Indians, advance to them as such interest as aforesaid the sum of ninety thousand dollars annually, counting from the time when the removal and allotments provided for in this act shall have been made, until such time as said permanent fund, exclusive of the deductions hereinbefore provided for, shall equal or exceed the [fol. 77] sum of three million dollars, less any actual interest that may in the meantime accrue from accumulations of said permanent fund; the payments of such interest to be made yearly in advance, and, in the discretion of the Secretary of the Interior, may, as to three-fourths thereof, during the

first five years be expended in procuring live-stock, teams, farming implements, and seed for such of the Indians to the extent of their shares as are fit and desire to engage in farming, but as to the rest, in cash; and whenever said permanent fund shall exceed the sum of three million dollars the United States shall be fully reimbursed out of such excess, for all the advances of interest made as herein contemplated and other expenses hereunder.

Sec. 8. That the sum of one hundred and fifty thousand dollars is hereby appropriated, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, to pay for procuring the cession and relinquishment, making the census, surveys, appraisals, removal and allotments, and the first annual payment of interest herein contemplated and provided for, which money shall be expended under the direction of the Secretary of the Interior in conformity with the provisions of this act. A detailed statement of which expenses, except the interest aforesaid, shall be reported to Congress when the expenditures shall be completed [25 Stat. 645].

The plaintiff Indians contend that the provisions of these sections created a conventional trust and thereby precluded the defendant from disbursing any of the funds involved except in strict accord with the same, which is the equivalent of saying that in this instance the conceded authority of Congress over tribal Indian lands and funds does not obtain. The defendant not only failed to observe the terms of the trust but, on the contrary, has depleted the trust fund by various disbursements to the Indians. The amount thus disbursed is the amount of the judgment sought.

The record establishes the fact that the defendant has disbursed from the fund created by Sections 7 and 8 of the act of 1889. We say disbursed—perhaps we should say has reimbursed the Treasury from the fund to the extent of appropriations made by Congress and paid to the plaintiff Indians, Congress authorizing the reimbursement in most instances, for purposes not mentioned in the act of 1889 and contrary to the terms of the alleged trust agreement.

[fol. 78] The act of 1889 is free from ambiguity. On the date of its enactment and subsequent approval it was the indisputable intent of Congress to conserve the tribal funds accruing from the sale of the surplus lands as provided

therein. Doubtless it was the belief of Congress that the income from the fund that was to be disbursed to the Indians annually during the fifty-year period would be sufficient, along with their individual landed estates, to maintain them, and at the same time would encourage the adoption of the ways of the Whites for themselves and future generations.

The total sum taken from the fund involved represents sums appropriated by Congress from public money which was paid directly to the Indians or for their benefit. The defendant in no way profited in doing what was done. It is not alleged and assuredly not established that the necessity for the appropriations made did not exist; hence, if the plaintiff Indians may recover all they claim, this court must hold that the fund was not a tribal one, and Congress in passing the act of 1889 surrendered its authority over Indian tribal funds and lands.

The twelve or thirteen bands of Chippewa Indians were tribal Indians. They held their reservations as tribal Indians. Kadrie case, 281 U. S. 206. True, some individual allotments had been made on certain reservations, but the greater acreage of their reservations was held and occupied as communal Indian lands. They were recognized by the defendant as tribal Indians, and the only possible distinction between the Chippewa Indians of Minnesota as a tribe and any other tribe of Indians was the division of the tribe into various bands. It was and is not now unusual to find a tribe of Indians made up of several bands who hold a reservation exclusive of other bands. This fact does not destroy the identity of the tribe as such or alter the character of the title by which their lands are held.

What was accomplished by the act of 1889 was a voluntary merger of all the tribal lands participated in by all the bands of the Chippewa Tribe, and consummated by cessions of all the Chippewa bands. It was in effect, and resulted in, a resumption of a tribal unit, always known as the Chippewa Indians of Minnesota—an abandonment of band organization and a return to a single tribal one.

[fol. 79] The plaintiff Indians insist that the act of 1889 created "a new class or entity" without tribal organization, possessing no lands or other property, devoid of leadership, and in fact having none of the characteristics of an Indian band or tribe. To this contention we cannot assent. The bands did cede their separate reservations and agreed to

take allotments on the Red Lake and White Earth Reservations, and thereafter participate upon an equal basis in the benefits to be derived from so doing. It was a transition from separate band organization to a unitary one, governed in precisely the same manner and under precisely the same laws applicable to the control and disposition of Indian lands by the Government.

The participants in this consolidation were all tribal Chippewa Indians. The lands ceded were tribal lands. The Indian bands surrendered whatever advantage they possessed because of band organization in the interest of their brethren, and agreed that all the Chippewa Indians in Minnesota, irrespective of bands, should take alike in the great Chippewa estate in Minnesota.

The fact that subsequent to the cession the ordinary Indian tribal organization in all its detail did not prevail is, we think, unimportant. Subsequent to the cession the lands were disposed of as communal Indian lands, the funds were recognized as also communal, and the entire administration of the Indian estate was conducted upon the basis of tribal lands and funds. The benefits to accrue from the same vested without discrimination in all the Chippewas of Minnesota. This was not the creation of a new class; it was simply the amalgamation of an old one.

Aside from all that has been said, it is of much more importance to give attention to the plaintiffs' contention that the defendant surrendered its plenary authority over Indian tribal lands and funds when the act of 1889 was approved. The contention is a novel one. It is, of course, conceded that this power and authority exist. Lone Wolf v. Hitchcock, 187 U. S. 553.

The plaintiff Indians argue that because Congress lacked the power to take the land of one of the bands and give it to another, it therefore lacked the power to do what was done [fol. 80] without the consent of the Indians, and thus surrendered its plenary power and authority over tribal Indian lands and funds. It is true Congress did not exert to the limit the power and authority it possessed when the act of 1889 was approved, but this fact does not import its nonexistence. The limitations of the power extend only to an impairment or destruction of vested rights. Gritts v. Fisher, 224 U. S. 640.

The lands and funds of the various bands of Indians were tribal and subject to the plenary power and authority of

Congress. This fact is indisputable. Congress made annual appropriations for the bands and treated and recognized them as tribal. The Indians themselves made no claim to the contrary. When the Indians ceded the lands they transferred the title they possessed, and this transaction did not in any sense emancipate the Indians, render them sui juris, or dissolve the relationship of guardian and ward previously existing.

The act of 1889 expressly withholds from the Indians the administration of its provisions. Congress reserved the power and authority to administer it. Every provision of the law exhibits with positiveness the recognized inability of tribal Indians to adjust and settle this vast and valuable estate. Not a single provision of the act in any way imports either a willingness or intent to surrender the power and authority Congress possessed in the premises, or to abandon its traditional and legal authority to care for the welfare and civilization of tribal Indians.

It is true that the act of 1889 contained a referendum clause. It was not to become effective until approved by a certain number of the Indians and the President. This fact does not, however, change the established relationship of the defendant and the Indians. The mutual assent of the interested parties to the enactment of the act did not create a contract.

When Congress abandoned the policy of treating Indian Tribes as dependent nations with whom the Government made treaties respecting their tribal affairs, as it admittedly did in 1871, it assumed and has since then continuously exercised the power and authority to manage, control, regulate, and adjust tribal Indian affairs, including their lands [fol. 81] and funds. The assumption of this plenary authority has been more than once approved by the Supreme Court. Lone Wolf v. Hitchcock, supra.

In the enactment of statutes similar to the act of 1889 designed to relieve and civilize Indian tribes, Congress did not intend to surrender this existing plenary power and authority if subsequent conditions exhibited an acute necessity to alter the terms of a pre-existing act so long as subsequent legislation did not take from the Indians vested rights. As to lands and funds remaining after the vesting of rights of property, and so long as the subsequent acts did not take from the tribe lands belonging to it and give them to strangers or appropriate them to the Government, the

plenary power and authority of Congress over Indian tribal lands and funds exist.

The case of Gritts v. Fisher, supra, directly in point, negatives the contentions of the plaintiffs advanced in this case. The Supreme Court in deciding the above case said:

> It is conceded, and properly so, that the later legislation is valid and controlling unless it impairs or destroys rights which the act of 1902 vested in members living September 1, 1902, and enrolled under that act. As has been indicated, their individual allotments are not affected. But it is said that the act of 1902 contemplated that they alone should receive allotments, and be the participants in the distribution of the remaining lands, and also of the funds, of the tribe. No doubt such was the purport of the act. But that, in our opinion, did not confer upon them any vested right such as would disable Congress from thereafter making provision for admitting newly born members of the tribe to the allotment and distribution. The difficulty with the appellants' contention is that it treats the act of 1902 as a contract, when "it is only an act of Congress and can have no greater effect." Cherokee Intermarriage Cases, 203 U. S. 76, 93. It was but an exertion of the administrative control of the Government over the tribal property of tribal Indians, and was subject to change by Congress at any time before it was carried into effect and while the tribal relations continued. Stephens v. Cherokee Nation, 174 U. S. 445, 488; Cherokee Nation v. Hitchcock, 187 U. S. 294; Wallace v. Adams, 204 U. S. 415, 423. [224 U. S. 648.]

Section 74 of the act of 1902 (32 Stat. 716), the initiatory legislation subsequently changed by the act of April 26, 1906 [fol. 82] (34 Stat. 137), as amended June 21, 1906 (34 Stat. 325, 340), involved in the Gritts v. Fisher case, supra, was submitted to the tribe for ratification. This section of the act of 1902 reads in part as follows:

> This act shall not take effect or be of any validity until ratified by a majority of the whole number of votes cast by the legal voters of the Cherokee Nation in the manner following [32 Stat. 727].

The case of Sizemore v. Brady, 235 U. S. 441, involved the "original Creek Agreement." The issue raised was similar to the one in this case. It was contended by the plaintiff that

the original agreement was a grant in praesenti and vested absolute rights to allotments of Indian lands, and that Congress was powerless to impair or alter the original agreement. In deciding adversely to this contention the court said:

> On the part of the maternal cousins it is contended that the provisions in the original agreement relating to the allotment and distribution of the tribal lands and funds were in the nature of a grant in praesenti and invested every living member of the tribe and the heirs, designated in the tribal laws, of every member who had died after April 1, 1899, with an absolute right to an allotment of lands and a distributive share of the funds, and that Congress could not recall or impair this right without violating the due process of law clause of the Fifth Amendment to the Constitution. To this we cannot assent. There was nothing in the agreement indicative of a purpose to make a grant in praesenti. On the contrary, it contemplated that various preliminary acts were to precede any investiture of individual rights. The lands and funds to which it related were tribal property and only as it was carried into effect were individual claims to be fastened upon them. Unless and until that was done Congress possessed plenary power to deal with them as tribal property. It could revoke the agreement and abandon the purpose to distribute them in severalty, or adopt another mode of distribution, or pursue any other course which to it seemed better for the Indians. And without doubt it could confine the allotment and distribution to living members of the tribe or make any provision deemed more reasonable than the first for passing to the relatives of deceased members the lands and money to which the latter would be entitled, if living. In short, the power of Congress [fol. 83] was not exhausted or restrained by the adoption of the original agreement, but remained the same thereafter as before, save that rights created by carrying the agreement into effect could not be divested or impaired. Choate v. Trapp, 224 U. S. 665, 671 [235 U. S. 449, 450].

We need not go back and discuss either the necessity of each individual band of Chippewas assenting to the passage of the act of 1889, or whether as a legal proposition the estate of all the bands might have been adjusted and finally settled by the exertion of the plenary power and authority

of Congress. It seems to us of little consequence to the solution of the issues presented by the record. We know what the individual bands did. We know that as tribal Indians they accepted all the benefits accruing to them under the act of 1889 and in accord with its terms. We know that they approved the act of 1889, and whatever may have been their rights under separate band organization we know they voluntarily surrendered them to acquire others under the act of 1889.

What we intend to hold and what we think the record sustains is that "About the beginning of the last century the Chippewas constituted one of the larger Indian tribes in the northerly part of the United States. In early treaties they were dealt with as a single tribe and were shown to be occupying a large area reaching from Lake Huron on the east to and beyond Lake Superior on the west. In later treaties they were regarded as divided into distinct bands; and particular bands—in some instances a single band and in others a limited plurality of bands—were recognized as occupying separate areas in Michigan, Wisconsin, Minnesota, and eastern Dakota, and as entitled to hold or cede the same independently of other bands and of the Chippewas as a whole." Chippewa Indians v. United States, 301 U. S. 358, 360, 361.

The various bands acting independently did cede their tribal lands to the United States; pooled, as it were, all the Chippewa Indian lands in Minnesota previously held by individual bands, and by so doing rendered them the communal Indian lands of all the Chippewa Indians of Minnesota. The bands by assenting to the act of 1889 returned to a single tribal organization precisely as the same had existed before their recognition as separate bands.

[fol. 84] If Congress intended in 1889 to create a new Indian entity possessing characteristics wholly different from a tribal one, endowed with legal authority to receive the benefits of the sale and disposition of tribal lands and funds free from the control and authority of Congress, it is the first time in the history of Indian legislation that this has been done. It was, indeed, a wide and unusual departure from the established Indian policy of the Government. It is clear to us that Congress did not so intend.

The contentions of the plaintiffs as we understand them concern exclusively the rights of the Chippewa Indians of Minnesota and their issue living on the date stated in the

act of 1889 for the distribution of the so-called trust fund. This must be so, for the Chippewa Indians of Minnesota now living and those who survived the enactment of the act of 1889 have participated in and received the monetary benefits brought about by the Government's legislation which depleted the fund, and in no way have suffered loss or damage.

In other words, the present members of the Chippewa Indians of Minnesota cannot have a complaint, and if the plaintiffs are to recover for the designated "remaindermen" they will have received not only the benefits of the so-called trust fund during all these years but the Government will be required to duplicate the distribution to their heirs at the end of the fifty-year period. This conclusion we think is inescapable.

We have considered with care the numerous cases cited in the briefs of counsel and are absolutely unable to find one which holds that under an act of Congress providing for the settlement of Indian tribal estates a succeeding Congress is powerless to alter a former act, when after the enactment of the first act the succeeding one deems it essential for the good of the tribe to exercise its plenary administrative power over unallotted Indian lands and undistributed Indian funds. Lone Wolf v. Hitchcock, supra; Winton v. Amos, 255 U. S. 373; United States v. Creek Nation, 295 U. S. 110; United States v. Mille Lac Band of Chippewas, 229 U. S. 498; Kadrie case, supra.

In the case of Cherokee Nation v. Hitchcock, 187 U. S. 294, 308, the Supreme Court held:

[fol. 85] We are not concerned in this case with the question whether the act of June 28, 1898, and the proposed action thereunder, which is complained of, is or is not wise, and calculated to operate beneficially to the interests of the Cherokees. The power existing in Congress to administer upon and guard the t[illegible] property, and the power being political and administrative in its nature, the manner of its exercise is a question within the province of the legislative branch to determine and is not one for the courts.

The established rule applies to the tribal funds of an Indian tribe or tribes whenever an existing Indian tribe challenges the administration of its estate under an act or acts of Congress.

The first claim of plaintiffs is for $232,011.21. Section 7 of the act of 1889 provided that the Government should advance to the Indians each year after the passage of the act the sum of $90,000, known as advance interest. These annual advancements were to continue until the permanent fund arising from the sale of surplus lands equalled or exceeded $3,000,000, less any actual interest accruing in the meantime.

The Government made annual appropriations of $90,000 in accord with the act for the fiscal years 1892 to 1911, inclusive, or a total sum of $1,890,000. On May 16, 1911, reimbursement was taken by the Government as follows: $896,246.93 from the permanent fund, and on later dates, $973,504.52 from the interest fund, or a total reimbursement of $1,869,751.45, resulting in a failure of the Government to obtain a full reimbursement of public money taken from the Treasury of $177.94.

The plaintiffs insists that the Government in taking reimbursement for advanced interest payments took from the permanent fund $232,011.21 more than the act of 1889 authorized. No contention is advanced that all the money involved was disbursed in any other way than for the exclusive benefit of the Indian tribe, nor is it contended that reimbursement for the sums appropriated by the Government was unauthorized, the only contention being that the permanent fund under the act of 1889 was depleted to the extent noted, to the prejudice of the remaindermen.

[fol. 86] The annual Indian appropriation bill for 1911 contained among other provisions the following:

For advance interest to the Chippewa Indians in Minnesota, as required by section seven, Act of January fourteenth, eighteen hundred and eighty-nine, entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," to be expended in the manner required by said Act, ninety thousand dollars: Provided, That the amount of this appropriation and all moneys heretofore or hereafter to be appropriated for this purpose shall be repaid into the Treasury of the United States in accordance with the provisions of the Act of January fourteenth, eighteen hundred and eighty-nine: Provided further, That the Secretary of the Treasury shall transmit to Congress on the first Monday in December, nineteen hundred and ten, a statement, by tribes and funds, of all moneys appropriated

by Congress since July first, eighteen hundred and seventy-five, required by law to be reimbursed to the United States from Indian tribal funds held in trust or otherwise, showing the extent to which such reimbursements have been, or may now be accomplished [36 Stat. 276].

The wording of this portion of the appropriation act discloses that Congress in its conception of its obligations under the act of 1889 appropriated each year the $90,000 advance interest payment without respect to the interest fund accumulating upon the permanent fund from year to year. Obviously, if Congress had been aware of the extent of interest accumulations it could have omitted these advance appropriations at least eight years sooner.

While technically it may be asserted that Congress did not strictly observe the provisions of the act of 1889, it is indisputable that the present plaintiffs suffered absolutely no loss, and now seek to gain a benefit from a transaction which did them no harm whatever. The reason advanced by the Government is a weighty one. While advancements of interest were appropriated by the Government the sums advanced were not completely disbursed in any one fiscal year.

The bookkeeping system of the Treasury discloses two separate accounts—one known as payment into the permanent fund and the other into the interest fund—and in the addition of unexpended balances as well as the addition and subtraction of sums from the interest fund the Secretary [fol. 87] of the Interior made the reimbursements as he construed the act of 1889 to authorize. In the multitude of entries in a large and continuing account over a long term of years the Government is not to be charged with an error that results in no loss or damage to any living Indian.

The act of 1889 provided that from the proceeds of the sale of the ceded lands the Government should be reimbursed for carrying out the act. The plaintiffs do not challenge the amount the Government appropriated and disbursed for this purpose. The present item in suit is a claim for $203.17, an alleged overreimbursement from the permanent fund.

In view of our judgment and opinion in this case, the defendant's defense to this item is invulnerable, and in no event was the reimbursement taken in excess of $25.23. There were a number of appropriations made by Congress

for the benefit of the plaintiffs, in each of which it was expressly provided that the Government should be reimbursed therefor from the plaintiffs' funds. The act of 1889 contained certain provisions which obligated the Government to provide sufficient funds for administering the act, and for these sums the Government was to be reimbursed. Obviously, no additional legislation was required to authorize such reimbursements. The sums for which the Government took reimbursement, in addition to these, were appropriations made by Congress concerning the welfare and civilization of the tribe and providing that they should be reimbursed for the same.

The plaintiffs seek to limit this item to one expenditure for carrying out the act of 1889 and object to treating the reimbursable items as a whole. This position is untenable. Congress retained its plenary power and authority over Indian tribal lands and funds and provided that the sums appropriated were to be reimbursed from the Indian funds. See Finding 9.

The Government by appropriation acts appropriated $19,782.50 for an Indian school at Leech Lake, Minnesota; $30,453.79 for a drainage survey of ceded lands; $35,000 for an Indian school at Red Lake, Minensota, and $17,974.54 for school buildings for the Chippewas of Minnesota. In each appropriation act it was expressly provided that the sums thus appropriated and disbursed should be reimbursed to [fol. 88] the Government out of the funds involved in this case. To hold that the act of 1889 precluded the Government from taking ample Indian funds of a tribe for the above civilizing purpose is contrary to established precedents.

In the discussion of items which are to follow it is not essential to enter into the details of accounting. The findings point out the sums involved; and we have adverted to typical items illustrative of all involved. As previously stated, the plaintiffs' case rests upon a lack of Congressional authority to take from the funds created by the act of 1889 any sum not expressly stated to be reimbursable. If this is the principle of established law, manifestly the plaintiffs are entitled to recover.

Aside from reimbursable sums mentioned in the act of 1889, additional items in suit involve reimbursement of large sums appropriated by Congress and expended for welfare and civilization of the tribe, which were either not

authorized by the act or exceeded the sums authorized. One item is education. The act of 1889 expressly authorized the expenditure of one-fourth of interest accumulations during the fifty-year period to be expended under the direction of the Secretary of the Interior for education. It is alleged and proved that more than one-fourth was expended, and subsequently the Government was reimbursed from the fund.

In the process of extending instrumentalities for obtaining an advancement of civilization, education becomes a leading and controlling factor. If Congress adopted the policy subsequent to 1889 of reimbursing appropriations made to Indian tribes for this purpose out of available Indian tribal funds, the courts may not intervene. The act of 1889 did not create a contract, and Congress did not by its enactment render the Government powerless to provide as in its wisdom it deemed appropriate for the education of the Indians. It retained control of unexpended tribal funds.

It is asserted that facilities for education inured to individual Indians and not to the tribe. It is unnecessary to combat the argument. The Chickasaw Nation v. United States, 87 C. Cls. 91. Agricultural implements, clothing for the needy, provisions and rations for the hungry, livestock, and food for their maintenance; fuel and light for [fol. 89] Indian homes; hospitals for the sick; funds for the burial of the dead, as well as innumerable other items restricted exclusively to the status of an Indian tribe, may, when Congress so prescribes, be paid for out of Indian tribal funds, irrespective of the provisions of the act of 1889.

In 1911 Congress adopted the policy of defraying the expense of Indian agencies and other costs of governmental activities in Indian affairs, either in whole or in part, out of available Indian tribal funds. In this case Congress observed this policy and provided that sums expended for this purpose should be reimbursable. The plaintiffs contest the item by a contention predicated upon governmental policy obtaining in former years. We will not review the origin and purpose of Indian agencies; it is sufficient to state that Congress determines the Indian policy and we may not challenge it.

Because Congress appropriated as it did between the years 1890 and 1910 the sum of $2,350,559 for the relief and civilization of the Chippewa Indians of Minnesota and di-

rected that the Treasury should obtain reimbursement of this sum "out of the proceeds of sales of land ceded by the Chippewa Indians under the act of 1889, or out of the proceeds of the sale of their lands," it becomes incumbent upon the plaintiffs to establish a diversion of the funds to purposes other than the relief and civilization of the Indians.

The record to warrant a recovery must not conclude with a mere showing that the provisions of the act of 1889 were not strictly complied with. The act of 1889 in its preamble discloses its purpose, and assuredly Congress was not compelled to permit a large population of tribal Indians to stand in need of the facilities of relief and civilization, when the tribe itself possessed ample and sufficient funds to supply the same. Under plaintiffs' contention the status of the tribe remained in statu quo for at least a half century if Congress in the meantime had refused appropriations.

Per capita distributions were all made to the Indians from the funds in accord with the following acts of Congress: 39 Stat. 135; 42 Stat. 221; 43 Stat. 1; 43 Stat. 798; 44 Stat. 7. Manifestly it was essential to make them. Changing economic and social conditions obviously inspired the legislation which altered the provisions of the act of [fol. 90] 1889. The present generation of Indians, as well as many who have passed on, accepted these benefits and they were beneficial, and they did not then object that the so-called trust fund was being unlawfully depleted. It was not until after all these benefits had been fully realized by the tribe that solicitude was manifested for the designated remaindermen.

The plaintiffs contest an expenditure made by the Government for a drainage survey of ceded lands, and repeating the provisions of the act of 1889 point out that no provision is found therein authorizing this proceeding. It is, of course, true that no express provision authorizing the survey is found in the Act. It was accomplished under congressional authority, and what was done inured to the Indians.

The extent of the funds to be realized from the sale of surplus lands was dependent upon their classification. Swamp lands if susceptible to drainage would enhance in value, and what the Government did was for the express benefit of the tribe. To bring the swamp areas into a state

of cultivation was in direct accord with the intent of the act of 1889 which, by express terms contemplated, if it did not express, an intent to bring the state to the point of its greatest value.

Out of the fund arising from the act of 1889 there was expended from 1905 to 1927 the total sum of $8,758,030.59. For the relief and civilization of the Indians for the years 1912 to 1927 the Interior Department expended approximately $2,526,267.74, and the per capita distributions during this same period totaled $5,684,341.60, a total disbursement of $8,210,609.34 either authorized by acts of Congress or disbursed in accord with the provisions of the act of 1889.

The plaintiffs subtract $8,210,609.34 from $8,758,030.59, which leaves $547,421.25, and upon this calculation insist that $547,421.25 was taken from the Indian fund without any authority either from Congress or the provisions of the act of 1889. No charge is made that this sum was disbursed for any other purpose than for the tribe's benefit, and authority must exist for the disbursements made.

The defense, and it is a conclusive one, discloses, and the record sustains the fact, that the report of the Comptroller General shows in detail all expenditures made for the benefit of the tribe from 1905 to 1927, inclusive. During the same [fol. 91] period of time expenditures for the survey, allotment, and sale of the ceded lands totaled $669,606.34, and were expressly authorized by the provisions of the act of 1889.

The $8,210,609.34 represents expenditures authorized by acts of Congress and, to say the least, the could would not be warranted in holding that the $547,421.25 was not part of the expenditures authorized by the act of 1889 and did not exact congressional authority. In other words, aside from what has been said, the record fails to establish the contention advanced with that degree of certainty required to warrant a judgment.

In the Kadrie case heretofore cited, this language is used in the opinion of the Supreme Court:

When the act of 1889 was passed the Chippewa Indians in Minnesota comprised eleven bands or tribes occupying ten distinct reservations in that state in virtue of treaties or Executive orders. Collectively, they were regarded as a single tribe and commonly called the Chippewas of Minnesota. They numbered about 8,300, and their reservations

contained approximately 4,700,000 acres. They were tribal Indians, under the guardianship of the United States, and held their reservations as tribal lands [p. 208].

Also, on page 221 of the same opinion, the court said:

The second question is more easily answered, for not only does the act of 1889 show very plainly that the purpose was to accomplish a gradual rather than an immediate transition from the tribal relation and dependent wardship to full emancipation and individual responsibility but Congress in *many later acts*—some near the time of the decision in question—has recognized the continued existence of the tribe. * * * With the tribe still existing the criticism by counsel for the relators of the Secretary's decision in other particulars loses much of its force. [Italics inserted.]

To sustain the plaintiffs' contentions exacts a holding from this court that the act of 1889 accomplished an "immediate emancipation" of the plaintiff Indians, had the effect of dissolving the relationship of guardian and ward, and placed the Government in the position of being absolutely unable to administer their tribal affairs. This we can not do.

We regret the necessity for lengthy and involved findings of fact, but find no way to avoid them. If, however, we are [fol. 92] correct in holding the lands and funds to be tribal ones subject to the plenary power and authority of the Government over the same, the detailed accounting becomes immaterial.

The petition will be dismissed. It is so ordered.

Whaley, Judge; Williams, Judge; Littleton, Judge; and Green, Judge, concur.

SUPPLEMENTAL OPINION

BOOTH, Chief Justice, delivered the opinion of the court:

The plaintiffs and defendant file motions to amend the findings and for a new trial. The defendant's motion does not challenge the judgment or opinion of the court. It is confined to amendment of the findings to make some of them more positive and to clarify others. The plaintiffs' motion alleges both errors of fact and law and points out the same,

and while the judgment and opinion of the court are challenged, a request for a reargument of the case is not asked.

The plaintiffs contend that one of their principal claims had been inadequately disclosed in the court's findings, and additional findings are requested in order that the claim may be so stated as not to foreclose a presentation of the same in the event of a review of the court's judgment. The request is a reasonable one and it may be the court did not find in extenso with respect to the facts involved. We grant plaintiffs' motion in part and amend our findings accordingly.

Plaintiffs' contention with respect to per capita payments made to the Indians under the acts appended to this opinion is thus stated: "Disbursement of large portions of the principal fund, prior to the termination of the fifty-year trust period, to persons then in being, many of whom are now dead, and who, so far as still living, may or may not survive to the end of the trust period so as to be entitled to share in the final distribution of principal to 'all said Chippewa Indians and their issue then living.'"

The Secretary of the Interior did, in accord with the acts of Congress attached hereto, make per capita distributions from the funds of the Indians in the Treasury to the amount of $5,684,341.50 and manifestly this decreased to this extent the amount of the fund available for distribution at the end [fol. 93] of the fifty-year period. Hence the issue presented by the requested findings is identical with plaintiffs' contentions as to all claims preferred.

If a beneficiary under the acts received a per capita payment from the principal fund and thereafter died before the expiration of the fifty-year period there can be no doubt as to the financial consequences to the issue of the Indian at the end of the fifty-year period. The final result, so far as the distributees mentioned in the act of 1889 are concerned, is in no way obscure. That, however, is not the issue. If Congress determined to utilize the existing fund for a generation of tribal Indians who in their judgment needed it to ward off the hardships of life, and who were really the creators of the fund, it was a matter for Congress to determine and not the courts.

Congress did not arbitrarily or capriciously deplete the so-called trust fund in the payment of a per capita distribution. On the contrary, it submitted to the Indians the ques-

tion as to whether they wished or disapproved it. A referendum appeared in every act but one authorizing the same. Obviously, the response to the referendums indicated immediate necessities and displeasure with the prolonged period involved in the disposition of the Indian tribal fund.

It is manifestly beyond the jurisdiction of the court to express agreement or disagreement with the provisions of the act of 1889. Congress possesses the authority to care for tribal Indians, and, under established precedents we have cited, the courts may not question its discretion or the exercise of the plenary power they have of right. If the case is restricted to a matter of accounting under the act of 1889 the findings tell the story.

The plaintiffs say that they appear in this case under the special jurisdictional act for and on behalf of "all those entitled to share in the final distribution," meaning all those entitled to receive a share of the fund when the trust period has expired, and it is insisted that the damages suffered by this class occasioned in part by the per capita payments from the fund "are to be here redressed."

If the contention advanced is predicated upon the theory that the jurisdictional act creates rights and consequent liabilities, or by its terms recognizes existing rights under [fol. 94] the act of 1889, it is answered by the decision of the Supreme Court in the Mille Lac Band of Chippewa Indians v. United States, 229 U. S. 498, 500, wherein the following rule applicable to the construction of special jurisdictional acts was established:

> The jurisdictional act makes no admission of liability, or of any ground of liability, on the part of the Government, but merely provides a forum for the adjudication of the claim according to applicable legal principles. Nor does it contemplate that recovery may be founded upon any merely moral obligation, not expressed in pertinent treaties or statutes, or upon any interpretation of either that fails to give effect to their plain import, because of any supposed injustice to the Indians. United States v. Old Settlers, 148 U. S. 427, 469; United States v. Choctaw &c Nations, 179 U. S. 494, 735; Sac and Fox Indians, 220 U. S. 481, 489.

We find nothing in the record to sustain a finding that the per capita payments here involved were made to the then beneficiaries of interest distributions. The acts au-

thorizing the payments use the terms "permanent" and "principal fund." The sums distributed and the extent of the Indian enrollment negative the fact that the distribution and payments were limited to the interest fund. The variation in sums as to different years is attributable in part to the difference in the amount of per capita payments authorized by the acts.

If the per capita payments were authorized by the act of 1889 and were intended only for beneficiaries of the interest distributions the Secretary of the Interior did not need special legislation to make such distributions. The act of 1889 conferred such authority. The special acts are susceptible to but one construction in our opinion, and that is Congress intended and clearly expressed such an intention to take from available funds in the Treasury to the credit of the Indians and distribute designated amounts to them per capita irrespective of the source from which the fund emanated.

The taking of a receipt from each distributee was a precautionary measure adopted by the Secretary of the Interior in formulating his regulations. This procedure has, we think, nothing to do with the solution of the issues in this [fol. 95] case. The Secretary was authorized to administer and pay out a large sum of money and the maintenance of strict regulations involving accounting was indispensable. As a matter of fact, the regulations promulgated by the Secretary were in no way unusual.

Plaintiffs argue that notwithstanding per capita payments made to individual Indians who had died prior to June 30, 1927, and to others now living who may survive the trust period, the entire amount distributed under the special acts should be appropriated by Congress and restored to the so-called trust fund. As to the survivors, the defendant is fully protected by receipts, and as to decedents the payment was unauthorized.

If the judgment of the court is erroneous and plaintiffs' contention hereafter sustained, the above argument will become important; it is now a stated principle of accounting, and may become important in fixing the sum to be appropriated if this court is wrong in its adjudication of the case.

We have gone carefully into the record in considering the motions for a new trial, and we have added this opinion to the original one because the plaintiffs in the brief appar-

ently feel that we neglected both in the findings and opinion to attach to the subject-matter of per capita payments the importance it deserves. On page 37 of the original opinion in the first line of the second paragraph the word "reimbursable" will be stricken out.

Plaintiffs' request for a new Finding 23 is denied. The subject-matter of the finding involves a statement of existing laws concerning the public school system of Minnesota, a matter of which the courts take judicial notice.

The determinative issue in this case, deducible from the facts involved, depends as we see it upon the one important legal principle: If Congress in enacting the act of 1889 precluded a subsequent Congress from administering the act of 1889 in accord with the existing condition of tribal Indians, and by legislation diverted the fund established by prior legislation in the interest of those then in need of it, does legal precedent exact a reimbursement to the fund of the sums expended? If Congress is without authority to care for the immediate needs of tribal Indians, and yet does so, is a legal liability imposed upon the United [fol. 96] States to appropriate again sufficient funds to carry into effect the provisions of an act which by its terms would leave an existing Indian population in what Congress has determined to be a condition of distress and necessity? What we hold is that Congress possesses the exclusive and plenary authority to deal with tribal Indian lands and funds as in its wisdom it deems just. It is a matter within the exclusive jurisdiction of Congress, and if the legislation does not impair vested rights or appropriate Indian property for a public purpose the courts are absolutely without jurisdiction. Lone Wolf v. Hitchcock, 187 U. S. 553.

The motions for a new trial are overruled and the motions to amend the findings are allowed in part and overruled in part. The former findings are withdrawn, and amended findings this day filed, the judgment and former opinion to stand. It is so ordered.

Whaley, Judge; Littleton, Judge; and Green, Judge, concur.

Williams, Judge, took no part in this decision.

The act of May 18, 1916, 39 Stat. 123, 135, provides in part as follows:

That the Secretary of the Interior, under such rules and regulations as he may prescribe, is hereby authorized to advance to any individual Chippewa Indian in the State of Minnesota entitled to participate in the permanent fund of the Chippewa Indians of Minnesota one-fourth of the amount which would now be coming to said Indian under a pro rata distribution of said permanent fund: Provided, That the Secretary of the Interior, under such rules and regulations as he may prescribe, may use for or advance to any Chippewa Indian in the State of Minnesota entitled to share in said fund who is incompetent, blind, crippled, decrepit, or helpless from old age, disease, or accident, one-fourth of the amount which would now be coming to said Indian under a pro rata distribution of said permanent fund: Provided further, That any money received hereunder by any member of said tribe or used for his or her benefit shall be deducted from the share of said member in the permanent fund of the said Chippewa Indians in Minnesota to which he or she would be entitled: Provided further, That the funds hereunder to be paid to Indians shall not be subject to any lien or claim of attorneys or other third parties.

The act of November 19, 1921, 42 Stat. 221, provides as follows:

That the Secretary of the Interior be, and he is hereby, authorized to withdraw from the Treasury of the United States so much as may be necessary of the principal fund on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section 7 of the act of January 14, 1889 (Twenty-fifth Statutes at Large, page 642), entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to make therefrom a per capita payment, or distribution, of $100 to each enrolled member of the tribe, under such rules and regulations as the said Secretary may prescribe: Provided, That the money paid to the Indians as authorized herein shall not be subject to any lien or claim of attorneys or other parties: Provided, That before any payment is made hereunder the Chippewa Indians of Minnesota shall, in such manner as may be pre-

scribed by the Secretary of the Interior, ratify the pro-
[fol. 98] visions of this act and accept the same.

The act of January 25, 1924, 43 Stat. 1, provides as follows:

That the Secretary of the Interior be, and he is hereby, authorized to withdraw from the Treasury of the United States so much as may be necessary of the principal fund on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section 7 of the Act of January 14, 1889 (Twenty-fifth Statutes at Large, 642), entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to make therefrom a per capita payment or distribution of $100 to each enrolled member of the tribe, under such rules and regulations as the said Secretary may prescribe: Provided, That before any payment is made hereunder the Chippewa Indians of Minnesota shall, in such manner as may be prescribed by the Secretary of the Interior, ratify the provisions of this Act and accept same: Provided further, That the money paid to the Indians as authorized herein shall not be subject to any lien or claim of attorneys or other parties.

The act of January 30, 1925, 43 Stat. 798, provides as follows:

That the Secretary of the Interior be, and he is hereby, authorized to withdraw from the Treasury of the United States so much as may be necessary of the principal fund on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section 7 of the Act of January 14, 1889 (Twenty-fifth Statutes at Large, 642), entitled "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to make therefrom a per capita payment or distribution of $50 to each enrolled member of the tribe, under such rules and regulations as the said Secretary may prescribe: Provided, That before any payment is made hereunder the Chippewa Indians of Minnesota shall, in such manner as may be prescribed by the Secretary of the Interior, ratify the provisions of this Act and accept same: Provided further, That the money paid to the Indians as authorized herein shall not be subject to any lien or claim of attorneys or other parties.

[fol. 99] The act of February 19, 1926, 44 Stat. 7, provides as follows:

That the Secretary of the Interior be, and he is hereby, authorized to withdraw from the Treasury of the United States so much as may be necessary of the principal fund on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section 7 of the Act of January 14, 1889 (Twenty-fifth Statutes at Large, 642), entitled, "An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to make therefrom a per capita payment or distribution of $50 to each enrolled member of the tribe, under such rules and regulations as the said Secretary may prescribe: Provided, That before any payment is made hereunder the Chippewa Indians of Minnesota shall, in such manner as may be prescribed by the Secretary of the Interior, ratify the provisions of this Act and accept same: Provided further, That the money paid to the Indians as authorized herein shall not be subject to any lien or claim of attorneys or other parties.

[fol. 100] VII. JUDGMENT

At a Court of Claims held at the City of Washington on the 9th day of January, A. D. 1939, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made part of the judgment herein, the court decides as a conclusion of law that the plaintiffs are not entitled to recover.

It is Therefore Adjudged and Ordered that the plaintiffs' petition be and the same is hereby dismissed.

[fol. 101] VIII. PLAINTIFFS' PETITION FOR ALLOWANCE OF APPEAL UNDER JOINT RESOLUTION APPROVED JUNE 22, 1936 —Filed January 20, 1939

To the Honorable the Chief Justice and Associate Justices of the Court of Claims of the United States:

The above named plaintiffs, the Chippewa Indians of Minnesota, conceiving themselves aggrieved by the judgment of this Court, entered on the 14th day of November, 1938, in

the above entitled cause, and, following the filing of "Motions for New Trial", affirmed January 9, 1939, do hereby except to said judgment and appeal therefrom to the Supreme Court of the United States, as authorized in the Joint Resolution approved June 22, 1936, entitled "Joint Resolution to carry out the intention of Congress with reference to the claims of the Chippewa Indians of Minnesota against the United States" (49 Stat. L., 1826-7), on the ground that the Court of Claims, in its determination of said cause erred in each of the respects indicated in the following assignments of error, to-wit:

I

In holding that the class designated in the Act of January 14, 1889 (25 Stat. 642), and in each of the agreements en- [fol. 102] tered into thereunder, as "all the Chippewa Indians in Minnesota" was not a new class, but was a formerly existing and recognized tribal organization previously known by that name.

II

In holding that by assenting to the Act of January 14, 1889, and entering into agreements of cession for the uses and purposes expressed in that Act, the bands of Chippewa Indians in Minnesota "returned to a single tribal organization precisely as the same had existed before their recognition as separate bands".

III

In holding that the mutual assent of the parties to the agreements entered into under the Act of January 14, 1889, did not create a contract.

IV

In holding the permanent or principal fund created pursuant to the agreements entered into under the Act of January 14, 1889, and limited and defined in Section 7 of said Act, to be tribal fund subject to the plenary control of Congress over tribal property.

V

In holding the rights of those entitled to share in the final distribution of said permanent fund to be tribal rights, subject to the plenary control of Congress over tribal property.

VI

In holding that the amounts withdrawn from said permanent fund as payment or reimbursement for "the expense of defendant's Indian agencies, and other costs of governmental activities in Indian affairs" (Opinion p. 36) though admittedly unauthorized by any provision of the Act of January 14, 1889, constituted a disposition authorized under the plenary power of Congress, and that plaintiffs, though representing those entitled to share in the final [fol. 103] distribution of said fund, are therefore not entitled to recover on account of the diversion of said fund to such purposes.

VII

In holding that amounts disbursed from said permanent fund in per capita cash payments to individuals, although admittedly unauthorized by any provision of the agreements made pursuant to the authority contained in said Act of January 14, 1889, constituted a disposition of said fund authorized under the plenary power of Congress, and that plaintiffs, though representing those entitled to share in the final distribution of said fund are therefore not entitled to recover on account of the diversion of the fund to this purpose.

VIII

In holding that although defendant's officers in 1911 erroneously made unauthorized and excessive withdrawals from said permanent fund as reimbursement for payment of advance interest previously distributed to the then interest beneficiaires, those entitled to share in the final distribution of said permanent fund suffered no loss thereby, and that plaintiffs, although expressly including and representing said ultimate distributees are not entitled to recover therefor.

IX

In holding that plaintiffs are not entitled to recover for the amount by which the total disbursements from said permanent fund under appropriations "for the purpose of promoting civilization and self support among said Indians" (Finding 15) exceeded a total of five per cent of said permanent fund. (Finding 13).

X

In holding that amounts withdrawn by defendant from said permanent fund to reimburse itself for expenditures for the drainage of lands ceded by the agreements made under said Act of January 14, 1889, and for the erection of [fols. 104-108] school buildings (Findings 11 and 12) were so withdrawn in accordance with the implied purposes of that Act, and that plaintiffs are not entitled to recover therefor.

XI

In holding that plaintiffs are not entitled to recover for amounts disbursed from said permanent fund for each of the purposes set forth in Finding 17.

XII

In holding that the disbursement from said permanent fund of the sum of $547,421.25 referred to in Finding 16, constituted a lawful disposition of said fund in accordance with said Act of January 14, 1889.

XIII

In holding as a conclusion of law that plaintiffs are entitled to no recovery, and in directing that the petition be dismissed.

XIV

In entering judgment dismissing plaintiffs' petition.

And plaintiffs pray that this appeal be allowed; that a true copy of the material parts of the record, proceedings and papers in said cause and upon which said judgment was based, duly authenticated under the hand and seal of the Clerk of this Court be transmitted to the Supreme Court of the United States, as provided by law, to the end that said judgment may be reversed and said cause remanded for further proceedings in accordance with the opinion of the Appellate Court.

Webster Ballinger, Washington, D. C., and Holmes, Mayall, Reavill & Neimeyer, Duluth, Minnesota, Attorneys for Petitioners.

ALLOWANCE OF APPEAL

The foregoing application for appeal is hereby allowed this 24th day of January, 1939.

Fenton W. Booth, Chief Justice.

[fol. 109] Citation, in usual form, showing service on Robert H. Jackson, omitted in printing.

[fol. 110] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 111] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed February 11, 1939

Come now appellants in the above entitled cause, and adopt as their Statement of Points upon which they intend to rely in support of their appeal, the Assignments of Error set out in their Petition for Allowance of Appeal, which forms a part of the Record, and state that the entire Record as certified to this Court from the Court of Claims, is necessary for the consideration thereof, and the printing thereof is requested.

Webster Ballinger, Washington, D. C.; Holmes, Mayall, Reavill & Neimeyer, Duluth, Minnesota, Attorneys for the Chippewa Indians of Minnesota, Appellants.

Service of the above and foregoing Points Upon Which Appellants Rely and Designation of Record to be Printed, accepted this 11th day of February, 1939.

Robert H. Jackson, Solicitor General.

[fol. 112] [File endorsement omitted.]

Endorsed on cover: File No. 43,151. Court of Claims. Term No. 666. Chippewa Indians of Minnesota, appellant, vs. The United States. Filed February 11, 1939. Term No. 666, O. T., 1938.